Also, petition of National Association of Clothiers, against S. 3023 (Aldrich currency bill) and favoring H. R. 12677 (Fowler currency bill)—to the Committee on Banking and Currency.

Also, petition of Philadelphia Board of Trade, against H. R. 17290, to amend an act entitled "An act to protect trade and commerce against unlawful restraints and monopolies"—to the Committee on the Judiciary.

Also, petition of National Guard Association of Illinois, favoring H. R. 14783, amending the act to promote efficiency of the militia—to the Committee on the Militia.

By Mr. NEEDHAM: Petition of W. P. Hoffman and other citizens of District No. 6, California, against the Penrose bill (S. 1518) for an amendment to section 3893 of the Revised Statutes—to the Committee on the Post-Office and Post-Roads.

By Mr. NORRIS: Petition of Farmers' Grain and Live Stock Association of Nebraska, favoring Federal inspection of grain—to the Committee on Interstate and Foreign Commerce.

By Mr. PAYNE: Papers to accompany H. R. 20050, granting an increase of pension to Alfred Gilkey—to the Committee on Invalid Pensions.

By Mr. PETERS: Petition of lumbermen of Massachusetts, for forest reservations in White Mountains and Southern Appalachian Mountains—to the Committee on Agriculture.

Also, petition of Henry L. Higginson and Richard L. Humphreys, of Boston, Mass., against building four more battle ships—to the Committee on Naval Affairs.

By Mr. PRINCE: Petitions of J. H. Walters and others and R. L. Bollman and others, of Henry County, Ill., for the Burnham parcels-post bill—to the Committee on the Post-Office and Post-Roads.

By Mr. SHERLEY: Petition of citizens of Louisville, Ky., asking that the telegraph systems of United States come under the provisions of the Erdman Act—to the Committee on Interstate and Foreign Commerce.

By Mr. SPARKMAN: Petition of the Fernandina Board of Trade, against the Frye joint resolution (S. R. 40), restricting the carrying of material and supplies to the Panama Canal in American bottoms—to the Committee on the Merchant Marine and Fisheries.

By Mr. SULZER: Petition of Emil Liebling, for a copyright law to prevent use of copyrighted melodies by phonograph and automatic piano companies—to the Committee on Patents.

Also, petition of Henry A. Mehldan, against the parcels-post bill—to the Committee on the Post-Office and Post-Roads.

Also, petition of the City Library, of Springfield, Mass., against section 33, S. 2900, to revise the acts relative to copyright—to the Committee on Patents.

Also, petition of California Harbor, No. 15, American Association of Masters, Mates, and Pilots, against H. R. 225 and S. 5787 and in favor of H. R. 14941, all being relative to an amendment of section 4463 of the Revised Statutes of the United States—to the Committee on the Merchant Marine and Fisheries.

By Mr. TIRRELL: Petition of E. R. Ballard and others, for the establishment of a national highways commission—to the Committee on Agriculture.

By Mr. WANGER: Petitions of Marine Engineers' Beneficial Association, No. 35, of San Francisco, Cal., and California Harbor, No. 15, American Association of Masters, Mates, and Pilots, against H. R. 225 and S. 5787 and in favor of H. R. 14941, amending section 4463 of Revised Statutes—to the Committee on the Merchant Marine and Fisheries.

By Mr. WEEKS: Petition of Celtic Literary Association of North Attleboro, against a treaty of arbitration with Great Britain—to the Committee on Foreign Affairs.

By Mr. WOOD: Petition of Newark Association of Credit Men, favoring passage of H. R. 13266, amending the national bankruptcy act—to the Committee on the Judiciary.

Also, petition of Newark Association of Credit Men, of Newark, N. J., opposing passage of Aldrich currency bill—to the Committee on Banking and Currency.

Also, petition of C. R. Burnett, of Newark, N. J., favoring passage of the Fowler bill (H. R. 12677)—to the Committee on Banking and Currency.

Also, petitions of J. B. Anderson and others, of Lebanon; Ringoes Grange, No. 12; Baritan Valley Grange, No. 153; Oak Grove Grange, No. 119, of Pittstown, all in the State of New Jersey, for creation of a national highways commission and making appropriation for construction and improvement of public highways—to the Committee on Agriculture.

Also, papers to accompany bills for relief of Gilbert M. Eversman and Andrew J. Cook—to the Committee on Invalid Pensions.

SENATE.

TUESDAY, *March 31, 1908.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. KEAN and by unanimous consent, the further reading was dispensed with.

ENROLLED BILL SIGNED.

A message from the House of Representatives, by Mr. C. R. MCKENNEY, its enrolling clerk, announced that the Speaker of the House had signed the enrolled bill S. 5589, an act granting pensions and increase of pensions to certain soldiers and sailors of the civil war and certain widows and dependent relatives of such soldiers and sailors, and it was thereupon signed by the Vice-President.

PROPOSED RAILROAD LEGISLATION.

The VICE-PRESIDENT. The Chair lays before the Senate resolutions of the Brotherhood of Locomotive Firemen and Enginemen of the United States, which, in the absence of objection, will be read by the Secretary.

The Secretary read as follows:

WASHINGTON, D. C., *March 31, 1908.*

Hon. CHARLES W. FAIRBANKS,
President of the Senate, Washington, D. C.

SIR: The undersigned, a committee representing a union meeting composed of 1,000 delegates representing the Brotherhood of Locomotive Firemen and Enginemen from thirty States, held at Masonic Temple, Washington, D. C., March 30, 1908, respectfully submit for the consideration of the Senate the following memorial adopted by said meeting:

Resolved, That we favor the early consideration and passage by Congress of the Hemenway-Graff bill, requiring common carriers to equip their locomotives with automatic self-dumping ash pans, thereby doing away with the necessity of men exposing themselves to danger by being compelled to go under locomotives.

Resolved, That we favor the passage by Congress of the La Follette-Sterling employers' liability bill, as against the Knox bill, the former being broad in its application and plain and explicit in its terms, thereby furnishing protection to a greater number of employees and their families, and being capable of intelligent understanding by those who would benefit by its provisions, while the latter bill is limited in its scope, less liberal to the employees, and contains principles which are experimental and untried in legislation and which would not be understood by many affected by it.

Resolved, That we are unalterably opposed to the passage of the Townsend bill, entitled "A bill to provide for the investigation of controversies affecting interstate commerce," as we believe said bill aims at Governmental regulation and control of labor disputes, is a step toward compulsory arbitration, and therefore threatens our liberties, both as employees and as citizens.

Resolved, That we view with increasing alarm the steady and gradual encroachment upon our liberties by Federal judges through the abuse of the power of injunction in labor disputes, such power having already been extended so as to prevent workingmen from striking and from organizing. We protest against this abuse, and demand the passage by Congress of such legislation as will preserve to us our civil rights and prevent the abuse of such power in the future.

Respectfully submitted.

JOHN M. HALL,
WILLIAM A. CAHOON,
Committee.

Mr. CULLOM. I have been requested by some portion of the committee in charge of the resolutions to ask that they be printed as a document.

The VICE-PRESIDENT. Without objection, it is so ordered. The resolutions will lie on the table.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a petition of the General Federation of Women's Clubs of Denver, Colo., praying for the enactment of legislation providing for investigating and developing the methods of treatment of tuberculosis, which was referred to the Committee on the District of Columbia.

He also presented a memorial of Marine Engineers' Beneficial Association, No. 35, of San Francisco, Cal., remonstrating against the passage of House bill 225, to amend section 4463 of the Revised Statutes relating to the complement of crews of vessels, and for the better protection of life, which was ordered to lie on the table.

Mr. CULLOM presented memorials of sundry citizens of Galesburg, Pontiac, Chicago, and Streator, all in the State of Illinois, remonstrating against the enactment of legislation to prohibit Sunday banking in post-offices in the handling of money orders and registered letters, which were referred to the Committee on Post-Offices and Post-Roads.

Mr. FRYE presented a petition of Norland Grange, Patrons of Husbandry, of East Livermore, Me., praying for the passage of the so-called "parcels-post bill," which was referred to the Committee on Post-Offices and Post-Roads.

Mr. PERKINS presented a petition of the Chamber of Commerce of Stockton, Cal., praying for the enactment of legisla-

tion providing Federal aid in agricultural and industrial instruction in high schools, which was referred to the Committee on Education and Labor.

He also presented a memorial of 1,488 citizens of the State of California, remonstrating against the enactment of legislation to prevent Sunday banking in post-offices in the handling of money orders and registered letters, which was referred to the Committee on Post-Offices and Post-Roads.

Mr. CRANE presented the petition of Vincent E. Barnes and sundry other citizens of Westfield and Springfield, in the State of Massachusetts, praying for the adoption of certain amendments to the Constitution of the United States, which was referred to the Committee on the Judiciary.

Mr. GAMBLE presented memorials of sundry citizens of Portland, Imperial, and Montavilla, all in the State of Oregon, and of Orange, Cal., remonstrating against the enactment of legislation to protect the first day of the week as a day of rest in the District of Columbia, which were referred to the Committee on the District of Columbia.

Mr. KEAN presented petitions of sundry citizens of Elizabeth, of District Council No. 2, Metal Polishers, Buffers, Platers, and Brass Molders' Union of North America, of Newark, and of Local Union No. 3, National Print Cutters' Association of America, of New Brunswick, all in the State of New Jersey, praying for the enactment of legislation providing for the construction of all battle ships at the Government navy-yards, which were referred to the Committee on Naval Affairs.

He also presented a memorial of sundry citizens of Paterson, N. J., and a memorial of Local Branch No. 5, St. Patrick's Alliance of America, of Passaic, N. J., remonstrating against the ratification of the pending treaty of arbitration between the United States and Great Britain, which were referred to the Committee on Foreign Relations.

He also presented petitions of sundry citizens of Montague, Delaware, Hope, Columbia, Oakland, Allendale, and Midland Park; of Raritan Grange, No. 156, Patrons of Husbandry, of Keyport; of the Board of Trade of Newark, and of Milltown Grange, No. 151, Patrons of Husbandry, of Milltown, all in the State of New Jersey, praying for the passage of the so-called "Burnham rural parcels-post bill," which were referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of the Board of Trade of Jersey City, N. J., praying for the enactment of legislation to establish a national forest reserve in the Southern Appalachian and White Mountains, which was referred to the Committee on Forest Reservations and the Protection of Game.

Mr. ANKENY presented a petition of Local Union No. 90, International Stereotypers and Electrotypers' Union, of Tacoma, Wash., praying for the repeal of the duty on white paper, wood pulp, and the materials used in the manufacture thereof, which was referred to the Committee on Finance.

He also presented memorials of sundry citizens of Manor, North Yakima, Anacortes, Cheney, Thorp, Nile, Ballard, Dixie, Dusty, Wilcox, Bridgeport, Farmington, and Stevens County, all in the State of Washington, remonstrating against the enactment of legislation to prohibit Sunday banking in post-offices in the handling of money orders and registered letters, which were referred to the Committee on Post-Offices and Post-Roads.

He also presented a memorial of sundry citizens of Manor, Wash., remonstrating against the enactment of legislation to protect the first day of the week as a day of rest in the District of Columbia, which was referred to the Committee on the District of Columbia.

Mr. TALIAFERRO presented a memorial of sundry citizens of Florida, remonstrating against the passage of the so-called "Penrose bill," to exclude nonmailable periodicals from second-class mail privileges, which was referred to the Committee on Post-Offices and Post-Roads.

Mr. GALLINGER presented a petition of sundry citizens of Richmond, N. H., and the petition of Goodnow and Derby, of Peterboro, N. H, praying for the passage of the so-called "rural parcels-post bill," which were referred to the Committee on Post-Offices and Post-Roads.

He also presented memorials of sundry citizens of California, Washington, Oregon, and Washington, D. C., remonstrating against the enactment of legislation to protect the first day of the week as a day of rest in the District of Columbia, which were referred to the Committee on the District of Columbia.

He also presented sundry petitions of citizens of Washington, D. C., praying for the enactment of legislation to prohibit gambling and bookmaking in the District of Columbia, which were referred to the Committee on the District of Columbia.

Mr. DEPEW presented a memorial of the Manufacturers' Association of New York City, N. Y., remonstrating against the passage of the so-called "anti-injunction bill," and also against the enactment of legislation to regulate the employment of child labor, which was referred to the Committee on the Judiciary.

He also presented a petition of Gansevoort Grange, No. 832, Patrons of Husbandry, of Saratoga County, N. Y., praying for the passage of the so-called "rural parcels-post bill," which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a memorial of the Central Federation of Labor of Albany, N. Y., remonstrating against the enactment of legislation to prohibit the manufacture and sale of intoxicating liquors in the District of Columbia, which was referred to the Committee on the District of Columbia.

He also presented memorials of the Clan-na-Gael Club, the Geraldine Club, the Shamrock Club, the Irish-American Athletic Club, the Kerrymen's Benevolent Association, and the John Mitchell Club, all of New York City, in the State of New York, remonstrating against the ratification of the pending treaty of arbitration between the United States and Great Britain, which were referred to the Committee on Foreign Relations.

Mr. WETMORE presented a memorial of the Sarsfield Literary Association, of Phillipsdale, R. I., remonstrating against the ratification of the pending arbitration treaty between the United States and Great Britain, which was referred to the Committee on Foreign Relations.

Mr. HOPKINS presented a petition of sundry citizens of Rock Island County, Ill., praying for the passage of the so-called "Burnham rural parcels-post bill," which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a memorial of Marine Engineers' Beneficial Association, No. 35, of San Francisco, Cal., remonstrating against the passage of House bill 225 to amend section 4463 of the Revised Statutes relating to the complement of crews of vessels, and for the better protection of life, which was ordered to lie on the table.

Mr. BROWN presented a petition of sundry citizens of the State of Nebraska, praying for the enactment of legislation to readjust the pay of soldiers who served during the civil war on a gold basis, which was referred to the Committee on Pensions.

He also presented memorials of sundry citizens of Hemingford, Minatare, Furnas, and Red Willow, all in the State of Nebraska, remonstrating against the enactment of legislation to prohibit Sunday banking in post-offices in the handling of money orders and registered letters, which were referred to the Committee on Post-Offices and Post-Roads.

He also presented petitions of sundry organizations of Blair, Nebr., praying for the adoption of an amendment to the Constitution to prohibit the disfranchisement of citizens of the United States on account of sex, which were referred to the Select Committee on Woman Suffrage.

He also presented sundry memorials of citizens of Omaha, Nebr., remonstrating against the passage of the so-called "parcels-post bill," which were referred to the Committee on Post-Offices and Post-Roads.

Mr. CLAPP (for Mr. KITTREDGE) presented a memorial of Fennimore Council, No. 249, Brotherhood of American Yeomen, of Mitchell, S. Dak., remonstrating against the passage of the so-called "parcels-post bill," which was referred to the Committee on Post-Offices and Post-Roads.

Mr. CLAPP presented memorials of sundry Grand Army posts of Marshall, Fillmore, Worthington, Brownton, Pelican Rapids, Sleepy Eye, Norwood, Wells, Long Lake, Stewartville, Maple Plain, Minneapolis, Desio, Anoka, Ontonville, Monticello, St. Peter, Lanesboro, Tank Center, Rush City, Duluth, Crookston, Red Wing, Mankato, Elk River, and Waterville, all in the State of Minnesota, remonstrating against the enactment of legislation proposing to abolish certain pension agencies throughout the country, which were referred to the Committee on Pensions.

He also presented petitions of the city council of Stillwater, of the Jobbers and Manufacturers' Association of St. Paul, and of the Commercial Club of St. Paul, all in the State of Minnesota, praying that an annual appropriation of $2,000,000 be made for the improvement of the upper Mississippi River, which were referred to the Committee on Commerce.

He also presented a petition of the Commercial Club of Faribault, Minn., praying for the adoption of the Nelson amendment to the so-called "Aldrich currency bill," which was ordered to lie on the table.

He also presented sundry memorials of citizens of Minneapolis, Minn., remonstrating against the enactment of legislation to prohibit Sunday banking in post-offices in the handling of money orders and registered letters, which were referred to the Committee on Post-Offices and Post-Roads.

Mr. KNOX (for Mr. PENROSE) presented sundry papers to accompany the bill (S. 3911) granting an increase of pension to Robert Morris, which were referred to the Committee on Pensions.

He also (for Mr. PENROSE) presented sundry papers to accompany the bill (S. 1205) for the relief of Annie E. White Shipp and the heirs of Patrick White, which were referred to the Committee on Claims.

He also (for Mr. PENROSE) presented petitions of E. F. Peterson and sundry other citizens of Sugar Grove, J. C. August and sundry other citizens of Diamond, T. J. Orr and sundry other citizens of Wellsboro, R. A. Norris and sundry other citizens of Grafton, W. S. Keller and sundry other citizens of Meadville, P. L. Louley and sundry other citizens of Aurora, C. W. Hess and sundry other citizens of Stillwater, W. H. Ernest and sundry other citizens of Burtville, J. H. Warner and sundry other citizens of Lawsonham, Samuel S. Deer and sundry other citizens of Pottstown, W. L. Lyman and sundry other citizens of Coudersport, G. W. Oster and sundry other citizens of Osterburg, M. M. Cleves and sundry other citizens of McKees Rocks, J. E. Westover and sundry other citizens of St. Lawrence, E. A. Reynolds and sundry other citizens of Welsh Hill, A. B. Sheeman and sundry other citizens of Thompsontown, Harvey Evans and sundry other citizens of Ebensburg, Edson Williams and sundry other citizens of New Milford, A. L. Smith and sundry other citizens of Burlington, W. R. Diehl and sundry other citizens of Greencastle, R. B. Freese and sundry other citizens of Arcadia, and Grange No. 874, Patrons of Husbandry, of Mansfield, all in the State of Pennsylvania, praying for the enactment of legislation providing additional protection to the dairy interests of the country, which were referred to the Committee on Agriculture and Forestry.

REPORTS OF COMMITTEES.

Mr. FRAZIER, from the Committee on Claims, to whom was referred the bill (H. R. 1815) for the relief of the estate of D. S. Phelan, reported it without amendment.

Mr. DILLINGHAM, from the Committee on the Judiciary, to whom was referred the bill (S. 1050) to repeal section 3480 of the Revised Statutes of the United States, reported it without amendment and submitted a report (No. 438) thereon.

ROOM FOR COMMITTEE ON REVISION OF LAWS.

Mr. KEAN, from the Committee to Audit and Control the Contingent Expenses of the Senate, reported the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That the Secretary of the Senate be, and he is hereby, authorized and directed to pay, out of the appropriation for the expenses of the special and select committees of the contingent fund of the Senate, for the room rented by the Committee to Consider the Revision and Codification of the Laws in pursuance of Senate resolution No. 114, the sum of $25 per month.

ADDITIONAL COMMITTEE CLERK.

Mr. KEAN, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the resolution submitted by Mr. WARREN on the 27th instant, reported it without amendment, and it was considered by unanimous consent and agreed to, as follows:

Resolved, That the Committee on Agriculture and Forestry be authorized to employ an additional clerk from April 1, 1908, for the remainder of the present session, who shall be paid at the rate of $2,220 per annum out of the contingent fund of the Senate.

BILLS INTRODUCED.

Mr. LODGE introduced a bill (S. 6410) for the relief of Elizabeth H. Rice, which was read twice by its title and referred to the Committee on Claims.

Mr. TELLER introduced a bill (S. 6411) for the relief of Henry Schaffnit, sr., which was read twice by its title and referred to the Committee on Claims.

He also introduced a bill (S. 6412) granting an increase of pension to Hiram E. Turner, which was read twice by its title and referred to the Committee on Pensions.

Mr. GALLINGER introduced the following bills, which were severally read twice by their titles and, with the accompanying papers, referred to the Committee on the District of Columbia:

A bill (S. 6413) to limit the period for refunding taxes and assessments erroneously paid;

A bill (S. 6414) to regulate the hours of labor on contracts with the District of Columbia, and for other purposes; and

A bill (S. 6415) to amend chapter 55 of the Code of Law for the District of Columbia.

Mr. CULLOM introduced a bill (S. 6416) granting an increase of pension to James White, which was read twice by its title and referred to the Committee on Pensions.

Mr. DEPEW introduced a bill (S. 6417) to amend sections 4467 and 4468 of the Revised Statutes, which was read twice by its title and referred to the Committee on Commerce.

Mr. PILES introduced a bill (S. 6418) authorizing the sale of lands at the head of Cordova Bay, in the Territory of Alaska, and for other purposes, which was read twice by its title and referred to the Committee on Public Lands.

He also introduced a bill (S. 6419) granting an increase of pension to Isaac H. Sprague, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

Mr. HOPKINS introduced a bill (S. 6420) granting a pension to Luzern D. Hord, which was read twice by its title and referred to the Committee on Pensions.

Mr. NELSON introduced a bill (S. 6421) to increase the limit of cost of the United States post-office, court-house, custom-house, and site at Duluth, Minn., which was read twice by its title and referred to the Committee on Public Buildings and Grounds.

Mr. BURKETT introduced a bill (S. 6422) to amend section 720 of the Revised Statutes, which was read twice by its title and referred to the Committee on the Judiciary.

Mr. TALIAFERRO introduced a bill (S. 6423) granting an increase of pension to Henry Handrop, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

He also introduced a bill (S. 6424) granting a pension to Katharine E. Looker, which was read twice by its title and referred to the Committee on Pensions.

Mr. ANKENY introduced a bill (S. 6425) to authorize the Secretary of the Interior to sell and dispose of the surplus unallotted agricultural lands of the Spokane Indian Reservation, Wash., and to place the timber lands of said reservation in a national forest, which was read twice by its title and referred to the Committee on Indian Affairs.

Mr. BACON introduced a bill (S. 6426) for the relief of the legal representatives of Robert Mitchell, deceased, which was read twice by its title and referred to the Committee on Claims.

Mr. CLAPP introduced a bill (S. 6427) to refund to the Territory of Hawaii the amount expended in maintaining light-house service on its coasts from the time of the organization of the Territory until said light-house service was taken over by the Federal Government, which was read twice by its title and referred to the Committee on Claims.

Mr. KNOX introduced a bill (S. 6428) granting an increase of pension to David Coble, which was read twice by its title and referred to the Committee on Pensions.

He also (for Mr. PENROSE) introduced the following bills, which were severally read twice by their titles and referred to the Committee on Pensions:

A bill (S. 6429) granting an increase of pension to Annie M. Mills;

A bill (S. 6430) granting an increase of pension to Thomas Nelson;

A bill (S. 6431) granting an increase of pension to John J. Fordney;

A bill (S. 6432) granting an increase of pension to William H. Vanatta;

A bill (S. 6433) granting an increase of pension to Charles Rice (with accompanying papers); and

A bill (S. 6434) granting an increase of pension to George W. Payne (with accompanying papers).

Mr. ELKINS introduced a joint resolution (S. R. 74) suspending the commodity clause of the present interstate-commerce law, which was read twice by its title and referred to the Committee on Interstate Commerce.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. BURKETT submitted an amendment relative to the settlement of the account of Noah M. Brooks, late a delegate to the Universal Postal Congress at Rome, Italy, etc., intended to be proposed by him to the post-office appropriation bill, which was referred to the Committee on Post-Offices and Post-Roads and ordered to be printed.

Mr. NELSON submitted an amendment providing that hereafter the judges of the district courts of the United States shall be allowed $6 per day as expenses for travel, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on the Judiciary and ordered to be printed.

Mr. LODGE. Yesterday I introduced two amendments, which are, as it appears by the title, amendments to the fortifications appropriation bill. They were both sent to the Committee on

Military Affairs. I want to have them go to the Committee on Appropriations, which has charge of that bill.

The VICE-PRESIDENT. It will be so ordered.

LAND FOR MILITARY POST AT FORT SHERIDAN, ILL.

On motion of Mr. FRAZIER, it was

Ordered, That Mrs. W. A. McNeill is authorized to withdraw from the files of the Senate all papers accompanying Senate bill No. 5665, Sixtieth Congress, entitled "A bill for the purchase of land for the use of the military post at Fort Sheridan, Ill.," no adverse report having been made thereon.

FUNERAL EXPENSES OF THE LATE SENATOR WILLIAM JAMES BRYAN.

Mr. TALIAFERRO submitted the following resolution, which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Secretary of the Senate be, and he hereby is, authorized and directed to pay, from the miscellaneous items of the contingent fund of the Senate, the actual and necessary expenses incurred by the committee appointed by the Vice-President in arranging for and attending the funeral of the late Senator from the State of Florida, Hon. William James Bryan, upon vouchers to be approved by the Committee to Audit and Control the Contingent Expenses of the Senate.

Mr. KEAN subsequently, from the Committee to Audit and Control the Contingent Expenses of the Senate, reported favorably the foregoing resolution, and it was considered by unanimous consent and agreed to.

COMMITTEE SERVICE.

Mr. LODGE submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That Mr. STEWART be appointed to fill the vacancies in each of the following committees:

Chairmanship, on Industrial Expositions;
On Fisheries;
On Five Civilized Tribes of Indians;
On Public Health and National Quarantine; and
On Revision of the Laws of the United States; said appointments to take effect April 1, 1908.

THE UNITED FRUIT COMPANY.

Mr. JOHNSTON. I submit a resolution and ask the indulgence of the Senate to make a brief statement about it.

The resolution was read, as follows:

Resolved, That the Department of Commerce and Labor be, and is hereby, directed to make an investigation into the character and operation and the effect upon interstate and foreign commerce of the combination or organization known as the United Fruit Company and allied concerns engaged in the growing, purchasing, importing, selling, and distributing of bananas and other tropical fruits, with a view to disclosing whether there is any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade and of commerce among the several States and Territories or with foreign countries in said industry; also whether the prices of said fruits have been controlled in whole or in part by the United Fruit Company and its allied or absorbed concerns; and if so, to investigate the organization, capitalization, profits, conduct, and management of the business of such corporations, companies, and corporate combinations, and to report thereon at the next session of the Sixtieth Congress according to law; and to report, further, whether or not said United Fruit Company, or its allied concerns, have made any contracts or agreements with any Central American republic in pursuance of any combination or attempted monopoly in said industry, whereby said republic has assisted or is to assist the operations of said combination.

The VICE-PRESIDENT. The Senator from Alabama asks unanimous consent to make a brief statement in regard to the resolution just read. The Chair hears no objection.

Mr. JOHNSTON. I have a statement of facts prepared by Messrs. Wheeler, Curtis & Haight, a reputable firm of attorneys in the city of New York, in regard to this case. I ask the unanimous consent of the Senate that the papers be printed in the RECORD, and referred, with the resolution, to the Committee on Interstate Commerce.

There being no objection, the papers were referred to the Committee on Interstate Commerce and ordered to be printed in the RECORD, as follows:

STATEMENT RELATING TO THE FRUIT INDUSTRY IN THE UNITED STATES.

[Prepared by Wheeler, Curtis & Haight, attorneys, New York.]

The United Fruit Company, a New Jersey corporation, was formed in 1899. Its capital stock is $20,000,000, of which sum $16,000,000 have actually been issued. It was the successor of the Boston Fruit Company, a corporation which had previously absorbed a number of independent fruit companies, and which was doing an interstate and foreign business, chiefly to the port of Boston, and chiefly in bananas. Prior to the organization of the United Fruit Company there was a large number of independent importers who carried bananas from the West Indies and Central America into the Atlantic and Gulf ports of the United States, and there sold to jobbers throughout the country, making their shipments by rail to such jobbers. Competition existed between them, both at the points of purchase of fruit abroad and at the various points of sale in the United States.

The United Fruit Company, at the outset, combined, by merger or otherwise, with some ten fruit companies, most of which were large importers. These included the Boston Fruit Company, of Boston, the Buckman Fruit Company, of Baltimore, the American, Dominican, and Monumental fruit companies, together with a number of others. During the years following its organization the United Fruit Company became the owner of a controlling interest in the stock of the principal importers who had not already become associated with the United Fruit Company. Thus it purchased a controlling interest in the Bluefields Steamship Company, which brought bananas from various Central American ports into New Orleans, and sold them throughout the United States; the Orr-Laubenheimer Company, which conducted a similar business; the Camors-McConnell Company; the Thacker Brothers Steamship Company, and the Belize Royal Mail and Central American Company. In each case the stock held by the United Fruit Company was either one-half or one share more than one-half, with the exception of certain instances in which the whole, or a great majority, of the stock was purchased. In no case did the United Fruit Company for any length of time remain the holder of a minority interest in any company. A great deal of the stock was held in the names of various officers, especially Andrew W. Preston, its president, and Minor C. Keith, its vice-president. Indeed, in the majority of the companies acquired subsequent to 1899 the name of the United Fruit Company does not appear as a stockholder. In some few instances, doubtless, the stock held by its officers was owned by them individually, but in a great majority of instances it has been held for account of the United Fruit Company.

The Boston Fruit Company, prior to the formation of the United Fruit Company, had organized a selling agency known as the Fruit Dispatch Company, and this was retained and its operation greatly extended by the United Fruit Company, which owns all its stock. The Fruit Dispatch Company became the exclusive selling agent of the United Fruit Company in its southern ports, and sold, and still sells, the majority of its fruit in the northern ports. It has also handled the entire importations of the allied companies, with the exception of the Thacker Brothers Steamship Company and the Atlantic Fruit Company. During its existence since 1899 it has had full control of the sales and prices of the fruit imported by all the corporations named, which comprised altogether some 80 to 90 per cent of the importations into the entire country. The Fruit Dispatch Company has two main divisions, the eastern division and the southern division. Prices are fixed for the eastern division by a committee which meets every Friday in New York, and the prices thus fixed are communicated to the various branch offices in New York, Boston, Philadelphia, and Baltimore. The prices for the southern division were formerly fixed by a committee meeting in the same way each week in New Orleans, and consisted of representatives from each of the allied companies. It is understood, however, that latterly the prices for the southern division have been fixed by the New Orleans manager of the Fruit Dispatch Company in consultation with the New Orleans manager of the United Fruit Company. These prices govern sales in New Orleans, Mobile, etc.

From time to time since the existence of the United Fruit Company the Fruit Dispatch Company has deliberately destroyed fruit for the avowed purpose of maintaining the market price which it desired to establish. This has been done even when the fruit destroyed has been in good condition and saleable at a profit, although at a price less than that fixed by the Fruit Dispatch Company's pricing committee. From time to time, too, the amount of fruit to be imported by subsidiary companies has been restricted at the direction of the United Fruit Company, in order to avoid overstocking the market and preventing the competition which ensues from such a condition.

The pricing committee at New Orleans has before it regular weekly reports from the Fruit Dispatch managers throughout the country, which are used as a basis for fixing prices. These reports show the number of cars sold in the particular district from which the report comes by the Fruit Dispatch Company during the week, and a similar report as to the fruit sold by each independent operator. The reports state what jobbers buy of the independents, what measures of competition are being adopted to stop independent sales, and in general the advice of the various branch managers is asked with reference to that end, and is given in the reports so laid before the pricing committee. These reports are on regular printed forms. Presumably the New York pricing committee has a similar system of reports.

By this means the two bodies of men meeting, respectively, in New York and New Orleans are able to tell at a glance every car of bananas sold by any independent operator throughout the entire country and are given elaborate data on which prices for the ensuing week are fixed. There have been many instances where jobbers were threatened with loss of their business if they continued to deal with independent importers, and accordingly such independent importers have been forced to lose their fruit for lack of a purchaser. There have also been instances where fruit has been given away by the Fruit Dispatch Company, in order to prevent the independents from selling what they had imported.

After the formation of the combination, there were a number of independent operators left outside it. Practically all of these have been put out of business in one way or another. For example, the firm of Henry Bayer & Co. had carried bananas into the United States for some thirty years, running chiefly to the port of Charleston, S. C. The United Fruit Company began to run its steamers there, the importations being handled by the Fruit Dispatch Company. Jobbers in the vicinity were warned that the Fruit Dispatch Company would not tolerate purchases from Bayer. Each time one of Bayer's ships arrived, the Fruit Dispatch Company would drop its prices far below the margin of profit, and thus compel the sale of the independent fruit at a loss, since owing to its perishable character, it was necessary to dispose of it without delay. When Bayer & Co. had disposed of its cargo, the Fruit Dispatch Company's prices would at once go up to a very high figure, to be held there until the next independent cargo arrived.

While this meant doing business at a loss for the combination as well as for the independent, the large resources of the United Fruit Company, and the large profits which it was able to make at places where there was no competition, enabled it to push competition with independents to an extreme, and to bring about a condition where it was merely a question of which side could stand the loss of money longest. Practically all of the independents, being small concerns, were forced to suspend. Bayer & Co. were successively driven out of Charleston and Galveston. The Alabama Fruit Company was driven, by similar methods, out of Mobile and, like Bayer, forced to go out of business, and the Verley Fruit Company, which ran to Providence, met the same fate. A similar competition was begun by the combination against the Di Giorgio Importing and Steamship Company, which imported through the port of Baltimore. In this case, as in most others, the competition took place at the foreign ports where fruit was purchased and grown, as well as at the domestic ports where it was sold, and the Di Giorgio Company lost money rapidly until it was finally forced to suspend, and the Atlantic Fruit Company was formed as its successor. This company encountered a similar opposition and was practically ruined when the United Fruit Company bought up a majority of its stock at about 30 cents on the dollar. The Atlantic Fruit Company is now doing a large and profitable business as a member of the combination.

The annual reports of the United Fruit Company from year to year show that its investment in the stock of other companies is about a million and a half dollars. Its annual importations, shown by such reports, as compared with the total importations into the country, shown by the official statistics of the Government, indicate that about 90 per cent of the importations of the country are controlled by the United Fruit Company and its associates. The one or two small independent importers who still run to New Orleans are believed to be working under an arrangement with the United Fruit Company, whereby their business is restricted, but of this there is at present no certain proof. The other facts cited above are capable of proof by legal evidence.

In connection with the American Banana Company, it appears that that company acquired and planted a large tract of ground lying along the Sixola River in Panama. There had been a dispute as to boundary between that Republic and Costa Rica, and the boundary had been fixed in the year 1900, several years before the American Banana Company acquired this land, by the arbitral award of the President of France. At the time when the first cargoes of bananas were about to be shipped by the American Banana Company a body of Costa Rican guards took possession of the portion of its plantation which lay upon the northerly side of the river, which portion contained the only port for shipment, and declined to allow the work to continue. It has subsequently appeared that the United Fruit Company has obtained an alleged title to this land from the Government of Costa Rica, which title was acquired subsequent to the acquisition of the land by the American Banana Company, and it further appears that the United Fruit Company has indemnified the Government of Costa Rica against any claims which may be made by the American Banana Company because of its ouster from the plantation. A copy of this agreement is annexed hereto.

Prices of bananas have gone up considerably since the formation of the United Fruit Company, and even in cases where it sells fruit to jobbers direct, without the intervention of the Fruit Dispatch Company, these sales are so safeguarded as to insure the absence of competition with the Fruit Dispatch Company. In Baltimore, for example, each jobber who buys from the United Fruit Company is required to state to what point he expects to send his fruit and where it is to be sold, and sales which conflict with those of the Fruit Dispatch Company are not permitted. The restraint of trade is exercised not only by the fixing of prices through the agency of the Fruit Dispatch Company and the consequent control of sales, but also, in the past at least, by the destruction of fruit at the ports of shipment in foreign countries, as well as at those of entry here.

In addition to the companies above named, the Camors-Weinberger Banana Company became a part of the combination about the year 1899 by a purchase of a majority of its stock by the United Fruit Company. In that company, as well as in the Camors-McConnell Company, the Bluefields Steamship Company, and the Orr-Laubenheimer Company, half, or more than half, of the directors have been representatives of the United Fruit Company, usually employees or officers of it.

THE UNITED FRUIT COMPANY.

[Translation of and extracts from "Berichte über Handel und Industrie," March 6, 1906. From a report of the imperial consulate in San Jose, Costa Rica, to the German Government.]

The United Fruit Company occupies in more than one way a peculiar position among American trusts. While almost all others are active in one field of industry and seek to monopolize the manufacture of one article, the United Fruit Company is an agricultural trust. It is engaged mainly in the production and marketing of a natural product, and one, too, that belongs to the Tropics—the banana. The other great staple articles of the Tropics, such as coffee, caoutchouc, and cocoa continue up to the present, even in the United States, in free markets. Up to the present time the banana is the only tropical product that has been monopolized by a trust.

The banana in Germany is as good as unknown, and even in America occupies relatively a minor position. As great as the use of bananas is in the United States, it is, nevertheless, inconsiderable when compared with other provisions and delicacies, such as grain, meat, coffee, sugar, etc. The company has, nevertheless, been able, by continued pursuit of its aim on this relatively small basis, to establish an economic power of the first rank, so that it to-day is the greatest of all purely agricultural enterprises to be found.

The trust was established in the year 1899 by the combination of different small enterprises. Of these the first in importance were the Boston Fruit Company and the Tropical Trading and Transportation Company, which latter company was organized by the American promoter, Keith.

The United Fruit Company controls not only almost the entire export of bananas to the United States, but has recently taken up exportation to England with success.

In the year 1905 the company operated with a capital, in round numbers, of 84,000,000 marks. Of this amount, 71,500,000 marks were in shares of stock, on which 7 per cent—that is to say, almost 5,000,000 marks—dividends were paid. In addition to this the company owed 10,500,000 marks in 5 per cent obligations, the interest on which amounted to 550,000 marks.

The main business of the company consisted, as already noted, of the cultivation and exportation of bananas. In the fiscal year ending September 30, 1905, the company shipped 30,000,000 bunches to North America and England. If the selling price be reckoned at 2 marks per bunch, the total for bananas alone would be 60,000,000 marks a year.

Further, the company owns extended plantations of sugar cane at Banes, Cuba, and manages a sugar mill there that can turn out 220,000 centner, a production that even now should be doubled.

Other branches of business of the company are the breeding and exporting of cattle, particularly from Costa Rica to Cuba, also the exporting of oranges (about 300,000 boxes annually), cocoanuts (about 30,000,000), and pineapples to the United States.

The landed property of the company is scattered in six tropical countries; it covers about 130,000 hectares. Its total capital invested in foreign countries is about eighteen to nineteen million dollars, almost half of which is invested in Costa Rica.

Exportation is carried on from seven tropical points: Jamaica (Port Antonio), Santo Domingo (Sanchez), Cuba (Banes), Colombia (Santa Marta), Panama (Bocas del Toro), Costa Rica (Limon), and Honduras (the Republic and British Honduras). There are also three stations in the West Indies, three in Central America, and one in South America. All of the important export points are represented except Nicaragua, which in the year 1904 shipped 1,700,000 bunches to North America. In the division of business in seven different countries there is a measure of safety against the political, economic, and meteorological disturbances, which are so frequent in this section of the world. In spite of their separation, however, the situation of the various plants is such that they can be conveniently reached from the United States.

As already noticed, the company has the larger part of its capital invested in Costa Rica. Cuba, Jamaica, and Panama follow in order, while its possessions in Santo Domingo, Colombia, and Honduras are relatively inconsiderable. Honduras is the only country where the company is not possessed of any landed interests, but simply buys its bananas.

In the export of bananas Jamaica stands at the head, with Costa Rica, Honduras, and Cuba following, but the Costa Rican bananas are the largest and finest.

The company's methods and facilities for transportation are noteworthy. Where the plantations for the most part lie near the coast, the building of extended railways is not necessary. In 1905 the United Fruit Company had, in round numbers, 260 kilometers of its own railroad in operation, mainly in Bocas del Toro, Panama, and Banes, Cuba. In addition to this, the company controls the entire Atlantic railroad system of Costa Rica, 385 kilometers.

More important than the railways is the company's system of water transportation. Two lines carry the British flag—the Belize Royal Mail and the Central American Steamship Company. Also the Tropical Fruit Steamship Company belongs outright to the company. It is also interested in Reederi, Elders & Fyffes, of Manchester, who bring the bananas to England. These three lines handle, however, only a small part of the necessary tonnage required for the transportation needs of the United Fruit Company. An entire fleet of vessels of various nations is necessary to bring the bananas from their point of shipment to the ports of entry in the United States. In part entire vessels and in part a certain space on vessels are chartered for years. As a measure of safety, the ships handling this company's trade fly various flags and are divided among various countries—Germany, Norway, England, and America. For example, the Atlas Line, formerly English and now German, carries all of Costa Rican bananas for New York.

A characteristic of the shipment of bananas is that they require considerable room and must be transported quickly to avoid loss. The shipping ports of the United Fruit Company have thereby a trade of relatively large, fast vessels and a convenient connection with the United States, which is far from corresponding with its economic importance in other respects. The number of banana ships of the United Fruit Company annually coming to the United States is almost a thousand. During the height of the season as many as forty steamers are sent weekly to North American ports. The cities of Boston, New York, Philadelphia, Baltimore, Mobile, and New Orleans are supplied with fruit directly from the vessels. Shipments for the interior are sent by way of New Orleans and Mobile and thence by rail. For this purpose, the United Fruit Company has organized another company—the Fruit Dispatch Company—that serves the inland consumers in a number of ways, and pushes its activities across the continent to the Pacific Ocean. This company handles annually more than 30,000 carloads. To protect bananas from freezing in winter, it has erected large warehouses in Springfield, Mo., and Cairo, Ill., the first of which can take care of 40 carloads and the second 80 carloads.

In order to utilize its landed estates, the company, in addition to the raising of bananas and sugar cane, also carries on the breeding and exportation of cattle. In the year 1905, the company handled 12,000 head of cattle, and 3,000 horses, mules, and asses. Here, too, Costa Rica takes the lead.

But this does not constitute all of the company's operations. It has large warehouses in Banes, Bocas del Toro, Limon, and Port Antonio. These permit development of imports in small countries, such as Panama and Costa Rica. The company furthermore conducts hotels, hospitals, and telephone lines, among them a 160-kilometer line between Limon and San Jose.

As already repeatedly stated, Costa Rica is headquarters of the company and in it, it has the most capital invested and represented in many branch lines. This position of the United Fruit Company in Costa Rico is the creation of one man, Minor C. Keith. The banana industry of Costa Rica and its development is due to him. He set the first plantation to work. He was manager of the Tropical Trading Company and later the vice-president of the United Fruit Company. He carried his plans through with finished judgment, wide survey, and iron energy. It would take us too far here to describe the gradual development of the company and follow the paths by which it has reached its present status. *It is sufficient to say that it has developed to-day in Costa Rica a mighty unassailable position as the uncontested lord of the land.* The relation of this *giant trust to the little Government is readily seen in the* fact that the revenue of Costa Rica, in round numbers, is 12,000,000 marks, over against which the receipts of this company for sales, of bananas is about 60,000,000 marks annually. The development of the United Fruit Company has operated on the economic life of the countries in the following ways:

The entire export of bananas in Costa Rica is in the hands of this company. Not a single bunch of bananas leaves the country without its assistance. It in part raises the bananas, in part secures them from independent planters, who are required to turn over to the company the entire yield at a fixed price.

In the year 1904 the banana exportation of Costa Rice was 6,000,000 bunches. Cost Rica furnished one-quarter of the total export of the company, and was surpassed in this respect only by Jamaica. Of the total yield, 1,300,000 bunches went to England (by the line of Elders & Fyffes) and the rest went to the United States.

The banana lands of Costa Rica are half in the possession of independent planters and the other half in the possession of this company. The company is steadily increasing its own possessions. That is because the larger establishments are more economical, and to secure its hold for the future existing contracts of the United Fruit Company with the planters run to 1908. By that time the company will have so increased its own possessions in Costa Rica and elsewhere that it will not have to deal with the planters. It will be in a position to lower the price, and under certain conditions to compel them to turn over their properties to the company at cheap rates.

But the United Fruit Company controls not only the raising and exportation of bananas, but also controls the necessary means of transportation therefor. It is one of the principles of the great American trusts to make themselves as far as possible independent from the source of production to the close of consumption, and so bananas remain from their planting in Costa Rica to the point of entry in the United States in the hands of the United Fruit Company or its dependent companies.

The United Fruit Company, in the years 1900 to 1902, built the Northern Railroad in order to thereby develop its banana estates. The old English Ferrocaril de Costa Rica, likewise controlling large banana properties, was interested. After a bitter contest, the Northern Railroad finally leased, in 1905, the entire line of the English company to San Jose and Alajuela, so that at the present time on the Atlantic side of the Republic there is only one railroad system, that of the United Fruit Company. The harbor of Limon, the only port of entry on the Atlantic coast, is in the hands of this company, and it controls piers belonging to the connecting lines of railroads. The Government has contracted not to grant any acquisitions from any other piers and would hardly be able to do so anyhow, as the harbor hardly offers sufficient room.

It is hardly necessary to state that the control of the water transportation is bound up with this. All the vessels of transportation to the United States and a part of those to England—that is to say, approximately three-quarters of the entire means of transportation—are in the service of the company. The transportation from Limon is the creation of the United Fruit Company. With a trade of over 600,000 tons annually, Limon is now the most lively port in all of Central America between Colon and Vera Cruz, and has attained an importance beyond all proportion in comparison with the country back of it, all through the banana industry of the United Fruit Company. Without this the shipping trade of Limon would be as unimportant as that of the other little harbors of Central America, and would have a slight trade only in time of the coffee harvest.

What bananas mean for the water transportation of Limon is seen in the fact that a bunch of bananas occupies about the same space on a vessel as a sack of coffee. Costa Rica ships, in round numbers, about 300,000 sacks of coffee and 6,000,000 bunches of bananas, according to which the bananas require twenty times the amount of space on board vessels as the other leading product of the land. The entire postal service of Costa Rica with the United States and Europe is taken care of by the United Fruit Company. Mail comes and goes once weekly by way of New Orleans or Mobile on the banana ships of the company, and it goes a farther distance on the Atlas steamers to New York with the bananas destined for that market.

Not only the port but the city of Limon and the region beyond can thank this company for their development. Limon, which used to belong to the unhealthiest spots on the coast is now kept in a measure under sanitary conditions. Cases of illness that now occur are taken care of in a hospital constructed and supported by the company. The banana regions, too, that formerly were isolated and unhabitated wilds, are to-day under cultivation and relatively thickly populated. This settlement has been made almost exclusively through immigration, of which nine-tenths has come through the United Fruit Company. The immigrants are mostly Jamaican negroes who work either for the company itself or for the planters. In this influx of negro element lies a great danger for the country.

The company plays an important rôle in the importation of the country, as it carries on its own business for the needs of its own employees, that approximately calls for one-tenth of the total imports of Costa Rica. More important yet is the fact that more than half of all the important goods coming into the country come in the ships of this company. That the United States has secured imports in a greatly preponderating measure over all other countries, together is due in no slight degree to the frequent, convenient, and fast transportation connections with America that the banana ships afford. The goods transported by this company—bananas, oranges, and cattle—are even now a half of the total exports of the country. Inasmuch as the other leading product of Costa Rica, coffee, has remained stationary for years, this percentage will constantly increase in favor of the United Fruit Company. Costa Rica in early years had a passive balance of trade, as the net receipts from coffee were not sufficient to cover the needs of the country for foreign goods, but now, on account of the huge shipment of bananas, the relation of imports to exports has been reversed.

In close connection with this stands the question of currency. Since 1900 Costa Rica has had the gold standard, and holds it yet. That it has been successful is largely to be ascribed to the United Fruit Company, as it pays the independent planters and negro workers in American gold. The gold import of the company in the year 1904 reached a sum of over two millions.

This account of the fields in which the United Fruit Company operates makes no pretense of being complete. The business operations of the company are so many sided that it is difficult to find the field in which it does not exercise an influence. Thus, for example, the coffee production of the country is due in not the least degree to the United Fruit Company. But, on the other hand, the company controls all means of transportation on the Atlantic side of the country, and by the raising of freight rates is in a position to cut down one of the main products in favor of another product.

All these operations and influences together have made Costa Rica in recent years quite another country. It has been lifted out of stagnation, put in touch with the world's trade, and takes part in the rapid development of the United States. Costa Rica is the only Atlantic State in Central America possessing on its east coast a flourishing harbor connected by rail with its leading (capital) city. All the other Central American independent States face the Pacific Ocean and are only now making attempts to open the door to the eastward.

AGREEMENT OF INDEMNITY.

[Translation.]

Juan Francisco Echeverria, secretary of state in the department of the treasury, in pursuance of instructions from the President of the Republic, on the one hand, and on the other, R. J. Schweppe, of lawful age, bachelor, citizen of the United States of North America, as fully empowered agent of the United Fruit Company, whereas they have taken account of the following facts and circumstances:

I.

That the judge of "administrativo contencioso" of the Republic, by a legal and valid decree of 1 p. m. of January 26 last, dictated in the respective document of denouncement, adjudged to the Northern Railway Company ownership of 5,850 hectares, 5,915 square meters of wild land (unoccupied public land), situated in the jurisdiction of the Comarco of Limon, in the region of Talamanca next to the river Sixola, which, according to the status quo regarding divisional limits between this Republic and that of Panama, and recognized in an explicit manner by both, is under the exclusive jurisdiction and sovereignty of Costa Rica.

II.

That H. L. McConnell, citizen of the United States, has attempted to acquire the area in question, without acquiring it by any legal method, suit or title, only by virtue of an occupation, in fact, which implies a penal usurpation, and that the Costa Rican authorities having notified him that he could not exercise possession of these lands or make use of them until he should acquire them in conformity with law, said gentlemen, both by himself (on his own account), and working in the name of a certain company, which he calls the "American Banana Company," has solicited the protection of the Government of the United States, instituting before it, as it appears, a claim for damages and prejudice—i. e., costs and damages—against the government of Costa Rica, which the latter rejects as hasty and unfounded.

III.

That the region where the lands denounced by the Northern Railway Company and adjudged to it by the said decree is included in that portion of territory which will pass under the sovereignty of Panama if the treaty relative to its boundaries which both republics are trying to formulate and which is pending ratification by their governments and congresses shall be definitely approved, as is to be expected.

IV.

The said decree of adjudgment of these wild lands to the Northern Railway Company has been submitted to the necessary approval of the department of state for treasury, in conformity with article 529 of the Fiscal Code.

V.

That although the adjudication is founded on a denouncement presented and carried through in conformity with law with relation to lands belonging to the public domain as wild (unoccupied) lands, and the state by virtue of its jurisdiction and sovereignty denies all right of McConnell in the region in question, it is convenient, by way of extreme precaution against the unforseen, to take into account the claim of said gentleman, however much it may lack foundation, and so the Government of the Republic has declared it.

Therefore the undersigned secretary of state and the agent of the United Fruit Company have agreed on the following:

1. The United Fruit Company declares that it takes upon itself the pecuniary responsibility of whatever kind and whatever may be the amount which may be collected from the government of Costa Rica, either in the unexpected case of said McConnell or said American Banana Company, of which he is said to be the president, should succeed in the unjustifiable claim aforesaid, or for other unforseen claims which may be presented in respect to said lands, and in consequence the United Fruit Company agrees, through the exponent, its agent, that it will pay to this government the amount of whatever sum it (the government) may have to pay for such reasons.

2. This department of state by virtue of the agreement set forth in the preceding clause, will approve on this date the decree of adjudication above alluded to, in order that the title of ownership may be executed, which by reason of such judgment has been issued to the Northern Railway Company.

In testimony whereof the executors sign in the city of San Jose on the 10th of the month of March, 1906.

J. F. ECHEVERRIA.
R. J. SCHWEPPE.

San Jose, March 10, 1906.
Let this contract be approved.
Signed by the President. ECHEVERRIA.

Mr. JOHNSTON. Mr. President, I wish to state briefly that the United Fruit Company is a New Jersey corporation, organized in 1899, with a capital of $20,000,000, of which some $16,000,000 has been issued in stock. Upon its organization it combined some ten or twelve companies engaged in this business, and since that time it has acquired many of the other companies engaged in the same business, either by the purchase of stock in the names of its various officers or otherwise, so that it now controls 90 per cent of the fruit trade in the United States.

This company has not hesitated to throw overboard cargoes of its fruit in various ports of the United States for the purpose of maintaining prices, and in other cases, according to these papers, it has given away fruit at competing points in order to destroy competition. It is also shown in these papers that the price of fruit is fixed weekly in New York and New Orleans by the agents of this company.

A few years ago an Alabama corporation, the Alabama Banana Company, thinking that it had the right to engage in this business, purchased a large tract of land in Panama, on the Sixola River, and proceeded to clear it and plant it in bananas. Just as the first crop was ripening and ready for shipment to the United States the United Fruit Company, by giving a bond of indemnity, procured the Government of Costa Rica, without any trial of the right of property, without any proceedings in any court, to seize the plantation and absolutely stop the exportation of a single banana from the property of the company. I have sent a copy of this bond to the desk to be printed in the RECORD to show that the United Fruit Company was the real actor in this lawless act.

The Alabama Company brought suit against the United Fruit Company in the circuit court of the United States for the southern district of New York, and upon the hearing of the cause recently the court declared that although the seizure might be unlawful, and although the plaintiff might be greatly damaged by the taking, it appeared upon the proceedings that the Government of Costa Rica had taken possession of this property and no court of the United States could render a decision against a sovereign power.

When it was stated in these papers, as I read them first, that the seizure was illegal, without any warrant of law at all, and at the most opportune time to destroy the business of the Alabama corporation, I had some doubts about it; I did not think it could be possible. But I have since been furnished with a report made by the German consul in San Jose, Costa Rica, to his own Government in regard to this trust. In the course of that report, which has been sent to the desk, speaking of this trust, the United Fruit Company, he says:

It is sufficient to say that it has developed to-day in Costa Rica a mighty, unassailable position as the uncontested lord of the land. The relation of this giant trust to the little Government is readily seen in the fact that the revenue of Costa Rica, in round numbers, is 12,000,000 marks and the receipts of this company for sales of bananas is about 60,000,000 marks annually.

Mr. President, this resolution is intended for our Government to take steps to see whether the laws can be defied, and whether a trust grown rich and powerful, having driven out all competitors down to 10 per cent, can shield itself behind the shadow of some little republic and defy this Government. The purpose of the resolution is to have the Department of Commerce and Labor make this investigation and see whether a trust, grown so great and powerful in this country, can use the agencies of *other* foreign governments to protect them in their nefarious operations.

The VICE-PRESIDENT. The resolution will be referred to the Committee on Interstate Commerce.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. M. C. LATTA, one of his secretaries, announced that the President had approved and signed the following acts and joint resolution:

On March 26, 1908:

S. R. 58. Joint resolution authorizing the Secretary of War to establish harbor lines in Wilmington Harbor, California; and

S. 626. An act authorizing and empowering the Secretary of War to locate a right of way for and granting the same and a right to operate and maintain a line of railroad through the Three Tree Point Military Reservation, in the State of Washington, to the Grays Harbor and Columbia River Railway Company, its successors and assigns.

On March 27, 1908:

S. 4922. An act providing for the platting and selling of the south half of section 30, township 2 north, range 11 west of the Indian meridian, in the State of Oklahoma, for town-site purposes;

S. 6135. An act providing for the disposal of the interests of Indain minors in real estate in Yakima Indian Reservation, Wash.; and

S. 3416. An act to amend an act entitled "An act authorizing the extension of Meridian place NW.," approved January 9, 1907.

On March 28, 1908:

S. 4046. An act to authorize the cutting of timber, the manufacture and sale of lumber, and the preservation of the forests on the Menominee Indian Reservation in the State of Wisconsin.

CLAIMS OF AMERICAN CITIZENS AGAINST VENEZUELA.

The VICE-PRESIDENT laid before the Senate the following message from the President of the United States, which was read, and, on motion of Mr. LODGE, was, with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed:

To the Senate:

In response to a resolution of the Senate, dated February 26, 1908, requesting the President—

"If not incompatible with the public interest, to communicate to the Senate the correspondence with the Government of Venezuela in relation to pending controversies with that Government concerning wrongs done to American citizens and corporations in that country by said Government"—

I transmit herewith a report by the Secretary of State, with accompanying papers.

Respectfully submitted.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *March 31, 1908.*

SNAKE RIVER DAM, WASHINGTON.

Mr. PILES. I ask unanimous consent that the Senate proceed to the consideration of the bill (H. R. 7618) to authorize the Benton Water Company, its successors or assigns, to construct a dam across the Snake River, in the State of Washington.

Mr. HEYBURN. Mr. President, some Senators who have announced that they intend to participate in the discussion of the bill to-day are not present in the Chamber this morning. They requested me to see to it that it should not come up for consideration until they could be here. I know one Senator who has left the Chamber intends to participate at once in the discussion of the bill. I suggest to the Senator from Washington that it had better be deferred, inasmuch as no one expected the bill to come up before 2 o'clock, it being the unfinished business.

Mr. PILES. I am not particular about pressing it now, I will say to the Senator from Idaho.

MINING TECHNOLOGY BRANCH.

The VICE-PRESIDENT. The Calendar, under Rule VIII, is in order.

Mr. GALLINGER. Let the first business on the Calendar be announced.

The joint resolution (S. R. 35) to provide for a mining technology branch in the Geological Survey was announced as the first business in order on the Calendar.

The VICE-PRESIDENT. At the request of the Senator from Massachusetts [Mr. LODGE] the joint resolution will go over.

FREEDMAN'S SAVINGS AND TRUST COMPANY.

The bill (S. 48) to reimburse depositors of the late Freedman's Savings and Trust Company was considered as in Committee of the Whole.

The bill was reported from the Committee on Education and Labor with an amendment, to strike out all after the enacting clause and insert:

That the commissioner of the Freedman's Savings and Trust Company and his successors in office be, and the same are hereby, authorized and directed to pay, or cause to be paid, under such regulations as said commissioner, with the approval of the Secretary of the Treasury, shall prescribe, to all the depositors of the Freedman's Savings and Trust Company whose accounts have been properly verified and balanced under existing laws, or to their legal representatives, a sum of money equal to the verified balances due said depositors from said company at the time of its failure, less the amount of dividends which may have been paid from the assets of said company; and for this purpose the sum of $1,000,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, said amount to be placed to the credit of said commissioner by the Secretary of the Treasury, for the purpose in this act specified. That the clerical expense for the settlement of these claims be paid out of the money herein appropriated: *Provided, further,* That any money not called for within two years after the passage of this act shall be used for the education of the colored youth of the South, under such rules and regulations as may be adopted by the Secretary of the Treasury.

Mr. MCLAURIN. I ask that there be a division of the question, so that the portion which it is proposed to strike out may be stricken out, and then, by agreement with the Senator in charge of the bill, I desire to offer two amendments to the portion which is to be inserted.

Mr. GALLINGER. Let the Senator offer his amendments now. It will be in order.

Mr. MCLAURIN. Very well.

The VICE-PRESIDENT. The Senator from Mississippi proposes an amendment to the amendment reported by the committee, which will be read.

The SECRETARY. On page 2, line 24, after the word "appropriated," insert the following proviso:

Provided, That any money not called for within one year after the passage of this act shall be covered into the Treasury of the United States.

The amendment to the amendment was agreed to.

Mr. MCLAURIN. There is another amendment which I desire to offer. The Senator in charge of the bill has agreed to accept it.

The VICE-PRESIDENT. The amendment to the amendment will be stated.

The SECRETARY. On page 2, beginning with line 25, strike out the remainder of the amendment, in the following words:

Provided further, That any money not called for within two years after the passage of this act shall be used for the education of the colored youth of the South, under such rules and regulations as may be adopted by the Secretary of the Treasury.

And to insert as an additional section the following:

SEC. 2. It shall be unlawful for any person to directly or indirectly accept or receive from any such depositor, or from any heir or legal representative of any such depositor, or from any beneficiary of this act, any compensation for any service or supposed service rendered or claimed to be or to have been rendered either in the procuring of the passage of this act or in the collection or payment of said deposit. Any person who shall violate this section shall be punished by a fine of double the amount so accepted or received and not more than $1,000 in addition thereto, or by imprisonment of not more than one year, or both.

The amendment to the amendment was agreed to.

Mr. BACON. Is there a report accompanying the bill?

Mr. FLINT. There is a report accompanying the bill.

The VICE-PRESIDENT. There is a report submitted by the committee.

Mr. BACON. If it is not long I should like to hear it read. If it is long and the Senator from California will state substantially what it is, that will probably serve the purpose.

Mr. CLAY. With the permission of the Senator from California, before he proceeds——

The VICE-PRESIDENT. Does the Senator from California yield to the Senator from Georgia?

Mr. FLINT. Certainly.

Mr. CLAY. My impression is that the senior Senator from South Carolina [Mr. TILLMAN] objected to the consideration of this bill, and I am sure he said he desired to be heard when the bill was considered. The Senator from South Carolina is now confined at his home sick. I am not able to say when he will return. Of course I would not ask that the consideration of the bill be postponed for the session, but if the Senator from South Carolina desires to be heard in regard to the measure, I hardly think the Senator from California ought to press it in his absence when he is sick, and when there is any reasonable hope of his returning to the Senate during the session. I am sure he desired to be heard upon the measure, for he so stated in my presence.

Mr. GALLINGER. I introduced the bill and on my motion it went to the committee of which the Senator from California is a member, and it was reported from that committee.

I will say to the Senator from Georgia my recollection is that whenever the bill has been reached on the Calendar the Senator from Mississippi [Mr. MCLAURIN] has asked that it should go over, and I do not think that in the Senate the Senator from South Carolina has made a suggestion of that kind. He may have done so privately, but I feel sure that it has been upon the suggestion of the Senator from Mississippi that the bill has gone over, and he wished it to go over for the purpose of offering the amendments he has offered this morning.

Mr. CLAY. I will say to the Senator that I am not absolutely sure the Senator from South Carolina objected on the floor of the Senate to the consideration of this measure. I am inclined to think he did. I know the Senator came to me and asked me to watch it, and he said he desired to be heard when the bill was considered. I know nothing of its merits; I have not looked into it; but I am absolutely sure that the Senator from South Carolina desires to be heard in regard to the measure.

Mr. MCLAURIN. Will the Senator from New Hampshire permit me?

Mr. GALLINGER. Certainly; I will yield to the Senator.

Mr. MCLAURIN. When the bill was first called on the Calendar I objected to its consideration. I examined the bill afterwards and I then, as now, think it is a bill without merit, but I thought if I could get certain amendments adopted, that would safeguard the bill against what I thought was probably an effort on the part of certain persons who had been for some time urging Senators and Representatives to the passage of the bill, I would raise no further objection to it.

In the first place, there was a provision in the amendment of the committee that the money not called for within a certain period should be turned over to certain authorities for the education of the colored youth of the South. I did not think that that was constitutional. I do not think now that it is under the fourteenth amendment of the Constitution. I do not think that there can be made any discrimination against the white youth of the South any more than there can be against the colored youth of the South. So it was agreed that that be stricken out, because the Senator with whom I consulted agreed with me that there was very great question at least about the constitutionality of that provision.

Then I thought another amendment, which had been adopted, that no person should receive or accept any compensation for any services rendered, or to be rendered, or claimed to be rendered, or supposed to be rendered, in procuring the passage of the act, or in collecting the payment of the claim of any of the depositors, would prevent any grafting by any combination of people who had gotten together for the purpose of getting Congress to pass this law. With these two amendments agreed to, while I do not think the bill is a meritorious one even with those amendments, and I did not intend to vote for the bill, I did not propose to make any further objection to its consideration.

Mr. CLAY. I hope the Senator from California, in charge of the measure, will at least not press it to-day until I can communicate with the Senator from South Carolina. I would prefer, at least, to do so.

Mr. FLINT. I have no objection to the bill going over if the Senator from Georgia insists upon it, but I was not aware that the Senator from South Carolina objected to the bill. The Senator from Mississippi did object to the bill each time it was reached on the Calendar, and it has gone over. After some consultation with him we agreed upon certain amendments, and those amendments have been adopted. I did not know that there was any further objection to the bill. If, as a matter of fact, the Senator from Georgia insists upon his objection, the bill may go over.

Mr. CLAY. I hope the Senator will agree to let it go over without my insisting upon it.

Mr. FLINT. If the Senator from Georgia desires to communicate with the Senator from South Carolina, I have no objection to the bill going over.

Mr. CLAY. I feel, in justice to myself, that I ought to communicate with him, because he communicated with me in regard to it.

Mr. FLINT. And if the Senator from Georgia thinks the Senator from South Carolina will be here during the present session, I would not like to have the bill go over for the session.

Mr. CLAY. I would not ask to have it go over for the entire session.

The VICE-PRESIDENT. The bill will be passed over without prejudice.

EMPLOYMENT OF CHILD LABOR.

The bill (S. 4812) to regulate the employment of child labor in the District of Columbia was announced as next in order.

Mr. GALLINGER. Let the bill go over for the present.

The VICE-PRESIDENT. The bill will go over without prejudice, at the request of the Senator from New Hampshire.

J. DE L. LAFITTE.

The bill (S. 5268) for the relief of J. de L. Lafitte was announced as next in order.

Mr. LODGE. I ask that the bill may go over.

The VICE-PRESIDENT. The bill will go over without prejudice, at the request of the Senator from Massachusetts.

UNIFORM WAREHOUSE RECEIPTS.

The bill (S. 1474) to make uniform the law of warehouse receipts in the District of Columbia was announced as next in order, and the Senate, as in Committee of the Whole, resumed its consideration.

Mr. GALLINGER. The bill was read yesterday.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

RETIRED MATES, UNITED STATES NAVY.

The bill (S. 5337) for the relief of Mate William Jenney, United States Navy, retired, and the eight other retired mates who have been placed on the retired list with the rank and pay of one grade above that actually held by them at the time of retirement was considered as in Committee of the Whole.

The bill was reported from the Committee on Naval Affairs with amendments, in line 3, after the word "That" to strike out the word "Mate" and insert "Mates;" in the same line, after the name "Jenney," in insert "William W. Beck, Thomas W. Bonsall, William Boyd, John Griffin, James Hill, Frank Holler, Robert Robinson, and Silas T. C. Smith," and in line 6, after the word "retired," to strike out "and the eight other retired mates;" so as to make the bill read:

Be it enacted, etc., That Mates William Jenney, William W. Beck, Thomas W. Bonsall, William Boyd, John Griffin, James Hill, Frank Holler, Robert Robinson, and Silas T. C. Smith, United States Navy, retired, who have been placed on the retired list of the Navy with the rank and pay of one grade above that actually held by them at the time of retirement by reason of their creditable civil war service, under the provisions of the acts of Congress approved March 3, 1899, and June 29, 1906, shall be credited with all their prior actual service, either as officers or enlisted men, in the Army, Navy, and Marine Corps, in computing their pay on the retired list from the date of their advancement under the provisions of said acts.

The amendments were agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

On motion of Mr. GALLINGER, the title was amended so as to read: "A bill for the relief of Mates William Jenney, William W. Beck, Thomas W. Bonsall, William Boyd, John Griffin, James Hill, Frank Holler, Robert Robinson, and Silas T. C. Smith, United States Navy, retired, who have been placed on the retired list with the rank and pay of one grade above that actually held by them at the time of retirement."

MICAIAH R. EVANS.

The bill (H. R. 13735) to correct the military record of Micaiah R. Evans was considered as in Committee of the Whole.

The bill was reported from the Committee on Military Affairs with an amendment, in line 4, after the word "desertion," to insert "from draft;" so as to make the bill read:

Be it enacted, etc., That the Secretary of War be, and he is hereby, authorized and directed to remove the charge of desertion from draft on the records of the War Department against Micaiah R. Evans, of

Twenty-second Pennsylvania Cavalry Volunteers: *Provided*, That no pay, bounty, or emoluments shall become due or payable by virtue of the passage of this act.

The amendment was agreed to.

Mr. BACON. I should like to ask the Senator from Wyoming [Mr. WARREN] to give us a statement in regard to this matter. I do not think, unless there is some reason for it, that the bill ought to be passed.

Mr. WARREN. The report is not a long one, and it might be read, but I will state the case in just a few words. This is a soldier who enlisted in 1861 and served as a private soldier until honorably discharged. He enlisted a second time, was made a corporal, and while he was absent from home performing his duties as a soldier he was drafted. This occurred one month after his second enlistment and while he was in the field. Later on he entered the service and completed another and third term of enlistment and was honorably discharged. So the sum total of this soldier's service was some four or five years as a volunteer and during almost the entire war, but his record is tarnished with a technical desertion, so called, from the draft. This is to correct his record.

Mr. BACON. I understand, then, from the Senator that the soldier was never actually a deserter?

Mr. WARREN. Oh, no; he was simply serving his country in the field at the time he was drafted. I will say, however, that under the laws and regulations he ought, when he completed his second term, to have reported under his draft, but the officers under whom he was serving at the time told him that there was no reason for it. The fact is that at a later time he enlisted again and served honorably and had honorable discharges from all the other services. This is a technical flaw against his record that should be removed.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

AMENDMENT TO PURE-FOOD LAW.

The bill (S. 42) to amend an act entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," was considered as in Committee of the Whole. It proposes to amend an act entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," as follows:

Section 6, after the words "of National Formulary," insert the words "or in the Homeopathic Pharmacopœia of the United States," so that the section as amended shall read:

SEC. 6. That the term "drug" as used in this act shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary or in the Homeopathic Pharmacopœia of the United States for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals.

The term "food" as used herein shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound.

Amend section 7, first subdivision, by inserting after the words "or National Formulary," wherever they occur, the words "or in the Homeopathic Pharmacopœia of the United States," so that the section as amended shall read:

SEC. 7. That for the purpose of this act an article shall be deemed to be adulterated:

First, if when a drug is sold by a name recognized in the United States Pharmacopœia or National Formulary or in the Homeopathic Pharmacopœia of the United States it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopœia or National Formulary or in the Homeopathic Pharmacopœia of the United States, official at the time of investigation: *Provided*, That no drug defined in the United States Pharmacopœia or National Formulary or in the Homeopathic Pharmacopœia of the United States, shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopœia or National Formulary or in the Homeopathic Pharmacopœia of the United States.

Mr. BACON. I should like to have the report in that case read. The bill might affect very important interests, although I presume it is all right.

Mr. GALLINGER and Mr. LODGE. Let the report be read.

Mr. BACON. I have asked for the reading of the report.

The VICE-PRESIDENT. The report will be read at the request of the Senator from Georgia.

The Secretary read the report submitted by Mr. HEYBURN March 30, 1908, as follows:

The Committee on Manufactures, to whom was referred the bill (S. 42) to amend an act entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," have considered the same and recommend its passage.

The purpose of the bill is to include the Homeopathic Pharmacopœia of the United States as a work of reference in determining the character or standard of certain articles mentioned in sections 6 and 7 of the pure-food act. In view of the fact that the school of homeopathic medical science is of such wide and general recognition the justness of this legislation is apparent.

Mr. HEYBURN. Mr. President, I will add just a word to the report. When the pure-food bill was enacted, it was provided that the National Formulary of Pharmacopœia, which is recognized by the allopathic school of medicine, should be the standard for determining certain definitions, and the homeopathic school was not included. As the report states, it was found that the Homeopathic Pharmacopœia contains a number of articles that are not included in the other pharmacopœia or formulary. So the necessity of including the Homeopathic Pharmacopœia is obvious.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

GOVERNMENT GUARANTIES OF FOODS AND MEDICINES.

The bill (S. 3043) to prevent fraudulent representations as to Government guaranties of foods and medicines, was considered as in Committee of the Whole.

The bill had been reported from the Committee on Manufactures with an amendment, in section 1, page 1, line 7, after the word "guaranteed," to insert "by the Government of the United States," so as to make the section read:

That it shall be unlawful for any person, association of persons, or corporation to place any mark, sign, or insignia upon any package, label, covering, or wrapping of any article of food or medicine stating in words or effect that the contents of such package are guaranteed by the Government of the United States under the pure food and drug act of June 30, 1906, or are guaranteed or recommended in any manner by the Government of the United States.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

ENLARGED HOMESTEAD.

The bill (S. 6155) to provide for an enlarged homestead was announced as next in order.

Mr. LODGE. That seems to be a pretty important measure. As I do not see the Senator from Utah [Mr. SMOOT], who reported the bill, in the Chamber at this moment, I think it had better go over, especially as there is no printed report accompanying the bill.

The VICE-PRESIDENT. The bill will go over without prejudice. This completes the Calendar under Rule VIII.

PACIFIC PEARL MULLETT.

Mr. BACON. Mr. President, if the Calendar, under Rule VIII, has been completed, I ask that a bill which was reached on the Calendar and passed over some days since upon the request of the Senator from Nebraska [Mr. BURKETT] be now taken up. It is Calendar No. 235. I do not know whether it now is on the Calendar under Rule VIII or Rule IX.

Mr. GALLINGER. It is under Rule IX.

The VICE-PRESIDENT. The bill referred to by the Senator from Georgia will be stated.

The SECRETARY. A bill (S. 1517) for the relief of Pacific Pearl Mullett, administratrix of the estate of the late Alfred B. Mullett.

Mr. BACON. I ask unanimous consent that that bill may now be taken up and acted upon. It has previously passed the Senate several times.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It directs the Secretary of the Treasury to pay to Pacific Pearl Mullett, administratrix of the estate of the late Alfred B. Mullett, $2,062.06, in full for the balance due her husband, on account of compensation and his actual expenses incurred as commissioner appointed from civil life on the Navy-Yard Commission under the provisions of the act of August 5, 1882, making appropriations for the naval service, the balance being based upon vouchers heretofore issued and approved by the Secretary of the Navy.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

PUBLIC LAND ACCOUNTS WITH STATES.

The VICE-PRESIDENT. The Calendar, under Rule IX, is in order. The Secretary will state the first bill.

The SECRETARY. A bill (S. 415) regulating the settlement of the accounts between the United States and the several States relative to the disposition of the public lands, and for other purposes.

Mr. KEAN. Mr. President, that is a very important bill, and I do not think it ought to be taken up at the present time.

The VICE-PRESIDENT. The bill will be passed over, at the request of the Senator from New Jersey.

PUBLIC BUILDINGS IN WASHINGTON CITY.

The bill (S. 122) authorizing the purchase of grounds for the accommodation of public buildings for the use of the Government of the United States in the District of Columbia, and for other purposes, was announced as next in order.

The VICE-PRESIDENT. The bill has been heretofore read.

Mr. CLAY. Let the bill be again read.

The VICE-PRESIDENT. The Secretary will again read the bill.

The Secretary proceeded to read the bill.

Mr. NELSON. Mr. President, I think there is objection to that bill.

Mr. GALLINGER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from New Hampshire?

Mr. NELSON. Certainly.

Mr. GALLINGER. Mr. President, I did not observe that this bill had been reached. I thought it was another that was under consideration. It will be recalled that I introduced a resolution a little time ago directing the Commissioners of the District of Columbia to ascertain the purchase price of these various blocks of land. I have information that the Commissioners have taken that work up diligently and that they will soon report to the Senate the result of their labors. I trust the bill will go over and await that report.

The VICE-PRESIDENT. The bill will be passed over at the request of the Senator from New Hampshire.

SCHOOL OF FORESTRY IN NORTH DAKOTA.

The bill (S. 560) granting the State of North Dakota 30,000 acres of land to aid in the maintenance of a school of forestry was announced as next in order.

Mr. NELSON. Mr. President, the Senator from Montana [Mr. CARTER], who is not in his seat, is opposed to the consideration of that bill. Therefore I ask that its consideration be postponed.

The VICE-PRESIDENT. Without objection, it is so ordered.

SNAKE RIVER DAM, WASHINGTON.

Mr. TELLER. Mr. President, I ask what has become of Order of Business No. 74, being House bill 7618?

The VICE-PRESIDENT. That bill has been made the unfinished business and will come up at 2 o'clock.

Mr. TELLER. I understand the Senator from Washington [Mr. PILES], who has the bill in charge, desires to have it taken up. I want to submit some remarks on it, and I ask to have it taken up now.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 7618) to authorize the Benton Water Company, its successors or assigns, to construct a dam across the Snake River, in the State of Washington.

Mr. TELLER. Mr. President, I should like to submit some remarks on this bill, or on the law touching this proposition, and I will do so now, with the indulgence of the Senate.

The bill involves, directly and indirectly—perhaps more indirectly than otherwise—a very important constitutional question. It is a question that, to my mind, is very clear, and it has been disposed of by the Supreme Court of the United States on sundry occasions, some of the decisions being at least 65 years old.

Recently there has grown up a new idea in this country—and it has been very prevalent in the last few years—that whatever might be suggested to be for the public interest should be carried on by the General Government without reference to whether there was authority to do it or not. I am inclined to make some remarks that I would not make, perhaps, on this bill or any other, if it were not for the repeated assertion that has been made in high public circles that whatever ought to be done we should find a method of doing.

Not long since the Secretary of State—and I am going to send to the desk and have read his remarks, as I have taken them from the public press and I have no doubt they appear therein correctly—in an address called attention to the fact that the States were not exercising the powers conferred upon them by their constitutions and recognized by the National Government as pertaining to them, and he said when they did not do so they must not complain if the Congress should assume the right to do what they had failed to do. As that spirit seems to be a very general one now, and is very prevalent, I want to say a few words about it. I want, in the first place, to have read at the desk an extract from the public press.

The VICE-PRESIDENT. The Secretary will read as requested, in the absence of objection.

The Secretary read as follows:

Extracts from the speech of Hon. Elihu Root, Secretary of State, delivered at a banquet given by the Pennsylvania Society, in New York City, on December 12, 1906.

Mr. Root said in part:

"If any State is maintaining laws which afford opportunity and authority for practices condemned by the public sense of the whole country, or laws which through the operation of our modern system of communications and business are injurious to the interests of the whole country, that State is violating the conditions upon which alone can its power be preserved. If any State maintains laws which promote and foster the enormous overcapitalization of corporations condemned by the people of the country generally, if any State maintains laws designed to make easy the formation of trusts and the creation of monopolies, if any State maintains laws which permit conditions of child labor revolting to the sense of mankind, if any State maintains laws of marriage and divorce so far inconsistent with the general standards of the nation as to violently derange the domestic relations which the majority of the States desire to preserve, that State is promoting the tendency of the people of the country to seek relief through the National Government and to press forward the movement for national control and the extinction of local control.

"STATES NOT ALIVE TO DUTY.

"The intervention of the National Government in many of the matters which it has recently undertaken would have been wholly unnecessary if the States themselves had been alive to their duty toward the general body of the country. It is useless for the advocates of State rights to inveigh against the supremacy of the constitutional laws of the United States or against the extension of national authority in the fields of necessary control where the States themselves fail in the performance of their duty.

"The instinct for self-government among the people of the United States is too strong to permit them long to respect anyone's right to exercise a power which he fails to exercise. The governmental control which they deem just and necessary they will have. It may be that such control could better be exercised in particular instances by the governments of the States, but the people will have the control they need either from the States or from the National Government, and if the States fail to furnish it in due measure, sooner or later construction of the Constitution will be found to vest the power where it will be exercised, in the National Government."

Mr. TELLER. The words "United States of America" describe to the world the nation known as the United States.

It has a written Constitution, the preamble of which provides:

We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

It is a Government of delegated, limited, and enumerated powers.

And every exercise of power by the nation must find its authority in the Constitution of the United States as originally adopted or in the amendments thereto.

When I speak of the Government as one of delegated, limited, and enumerated powers, I do not in any way deprecate it or deny to it such powers as are provided for in the Constitution or that must follow such enumerated power in order that there may be an efficient exercise of the power specifically declared.

But I can not agree to the doctrine, now somewhat popular, that by legislative or judicial construction powers certainly withheld may be exercised, because such exercise may be beneficial, or because powers withheld to the people or to the State may not be exercised, or if attempted to be exercised, may not be so exercised as to meet the approval of the executive, legislative, or judicial departments of the Government.

I do not stand for any hair-splitting theory, but for a fair and honest determination. What did the framers and makers of the Constitution intend to authorize to be done?

However desirable it may appear to me that certain powers ought to have been given to the Executive or Congress, the question is, What did the creators of the Constitution, that is, "We the people * * * do ordain and establish the Constitution"—what did they mean to do? And the only way to determine what they meant to do was by what they did do.

We can never consider the question properly unless we consider the conditions at the time the Convention was held to form the Constitution, and what defects in the then existing Government were to be cured by the change in the character of the Government.

It may seem to be a waste of time to detain the Senate with a statement of the conditions of the United States at the time of the assembly of the Constitutional Convention, and it may

appear to be a reflection on the intelligence of the Senate to call attention to what ought to be and doubtless is well known to us all.

But, Mr. President, we have reached a period in our country's history unlike any other period to which we can point.

We are met with the declaration not once, but many times, from those whose duty it is to discharge high and important public duties, that their efforts are obstructed by a lack of administrative power. Evils are pointed out that ought to be suppressed, but the inquiry is, Where is the authority to do it. And if we point to the powers of the States, we are told the State will not do it. Evils have been pointed out that should be remedied. Congress has been admonished to find some way by which such evils can be remedied or checked, and we have been told that Congress ought to find out some way to do it, some way not apparent to our advisers, nor to us.

Mr. President, it will be noticed that the Secretary of State does not indicate that there is any proposition to amend the Constitution. The last utterance read would indicate that he expected this change to be made by construction, and whether that construction is to be given by the legislative department, the executive department, or the judicial department is somewhat uncertain from his words.

I do not think that to a body which is composed largely of lawyers I need say that it is not possible, either legally or morally, to change the Constitution of the United States by construction. We may differ as to what the Constitution means. The Supreme Court may one day say that it means one thing and another day that it means another thing; but there has never been any court yet that has attempted to construe the Constitution except to construe it according to its meaning. No court has ever said "it ought to mean this, and therefore we will hold that it does." That is the theory upon which of late appeals are made to us to act.

The President of the United States not long since in addressing Congress said there were certain evils that Congress ought to find a way to remedy. The duties and the powers of Congress are carefully delineated in the Constitution of the United States; and if we have sometimes, perhaps, proceeded contrary to that delineation, we could rely upon the courts to determine whether we kept within the constitutional limit or whether we exceeded it.

The Secretary of State is one of the most illustrious lawyers in the United States, and I have no doubt, if the question were put to him, he would say frankly "you must proceed according to the Constitution to make any change in the general theory of the Government." But, in accordance with the general idea that we have not time to amend the Constitution when it needs it, you must find your remedy now, right away, and you can possibly find it by the enactment of some law here, subject of course to the supervision of the Supreme Court of the United States, or it is possible that the Supreme Court of the United States might determine also that they had power to construe the Constitution differently from what their predecessors had done or differently from what it means; but up to this time that never has taken place, and I do not suppose the time will ever come when the Constitution of the United States will be construed by the Supreme Court except in accordance with its terms and its original meaning.

It would seem to be unnecessary for me to say that the powers of the General Government are limited and restricted by the Constitution of the United States, and that no power can be exercised by the General Government unless the authority for its exercise can be found positively in the Constitution, or properly inferred from what is in the Constitution. There is a pretty general rule of law among lawyers—and it has been sanctioned by the Supreme Court on more than one occasion—that a statute absolutely clear in its meaning can not be construed otherwise than in strict accordance with its language, and statutes that do not admit of any controversy need no construction whatever.

Mr. President, I want now to approach this question of the power of the General Government over the States. I know that State rights is not a very popular idea; I know very well that when you speak of State rights you array against you an old prejudice which has existed for many years, and which culminated in its intensity during the great civil war and immediately thereafter; and yet the hope and the expectation of this country must be in the preservation of the State governments. I will not take much of the time of the Senate to go into that. I only want to say that the forty-six sovereignties who come, each of them, nearer to the people of their respective jurisdictions than does the General Government are better calculated and better qualified to maintain order and peace within their respective boundaries—and that is the great purpose of State governments—than is the General Government. When the time comes that the people in New England shall determine what the people of Oregon and of Washington shall do locally, and when the people of Oregon and Washington shall determine what the people of New England shall do locally, we shall be practically at the end of this Government of ours.

We ought to pay some heed to the lessons of the past. There has never been in the history of the world such a confederation of sovereignties as that which exists in this Government of ours; but, Mr. President, there have been innumerable confederacies of a different character that have existed and flourished for years and then have fallen. I venture to say now—and history will bear me out—that in practically every case where there has been such a confederacy and it has been ultimately dissolved, it has been dissolved because of a failure to respect the rights of each individual member of the confederation.

No people in the world probably were better qualified at one time for self-government than were the Greeks. They organized a confederacy that lasted for a few years, and when it disappeared it disappeared because Athens, the great city of intellectual culture and of art, became the oppressor of the other members of the confederacy, who no longer felt that they were allies, but subjects. So, when the Persian power came down on Greece, those who were dissatisfied with the ruling power of their own confederacy either withheld their assistance from Athens or took the other side. Then the confederacy of Delos, perhaps the most remarkable in all history, disappeared simply because there was not that cohesion which is necessary to maintain, and always has been necessary to maintain, different confederacies or different national associations.

I am not particularly careful, perhaps, about the word "confederacy." It is quite immaterial whether we are a confederacy in the strict sense of the term. We have retained for the States the right to do certain things. We speak of these frequently as the police powers. There are certain things that we can not take away from the States, and we can not increase their rights. That is one of the things that is settled and distinctly understood.

I am not one of those who would minimize in the slightest degree the national power. I have believed for many years that in all questions appertaining to national affairs this Government of ours is as supreme as any other government in the world in times of war and in times of peace.

Mr. President, I remember a few weeks ago a distinguished member of the Supreme Court of the United States made a speech in the city of New York in which he said that the National Government is supreme in all things appertaining to nationality and the States are supreme in all things appertaining to the States. I intended to present that as an epitome of the real theory of this Government, but I mislaid my copy. It was the justice from Kentucky, Mr. Harlan, long on the bench, and who by his devotion to duty and his well-known patriotism has shown himself the peer of any man who has sat on the bench, in modern times at least. That ought to be the watchword. The Federal Government should exercise all of the powers necessary for the General Government; the State should exercise all the powers necessary for local administration and local affairs.

The proposition before us here to-day is to build a dam on a navigable river. I do not deny the power of Congress to authorize the building of a dam on a navigable river, with locks and canal so as not to obstruct navigation. It has been done on several occasions. It has been done in a number of cases recently. That is not the question. Should the Government of the United States authorize the building on its rivers of dams that in any way might interfere or disturb its constitutional right to control the navigation of the stream? We have fallen into an idea that if the lower waters of a river are navigable the river is navigable to its source. In other words, we have fallen into the idea that if the Government has control over the first 400 miles of a river, it ought to have control over the upper and farther end. That is not the law. Under the English rule, the civil law, rivers are navigable as far as the tide ebbs and flows and no farther. Our rivers are navigable just as long as a boat can traverse them, and the Supreme Court has so held.

Nobody in any of the States or in any section of the country denies the right of the Government of the United States to control the commerce of the rivers and the Great Lakes. The question is, Under what conditions must it be controlled? The Government may control them in every possible way that is necessary for commerce. In other words, the Government may control the agencies of commerce, but the Government has not any control over the river, nor has the Government any control of the land under the river.

I assert that as having been decided by the Supreme Court more than sixty years ago and repeated at least thirty times since, and I have here, and shall present before I get through, the law on the subject. How it happens that anybody in these days should suppose that the Government of the United States owns the waters and the rivers, navigable or nonnavigable, I can not conceive, in view of the fact that the courts have held for so long, and every law writer of any consequence in this country, taking Story, taking Kent, and all that class of men, have asserted the doctrine that the waters of a river and the waters of arms of the sea belong to the State and do not belong to the General Government. The Supreme Court very early determined that the right to fish, to plant clams and to gather them was to be controlled by the States and not by the General Government.

I wish to make another statement for which the authorities will bear me out. The Government of the United States can not obstruct a national river. I mean by a "national" river a river that is entitled to be called a "navigable" river. It has no more power to do that than a private citizen—not a particle. Whether I shall present authorities for that or not I am not certain, in the multiplicty of cases that I am going to call attention to, but it can be found in the decisions of the court and in the early law writers upon the subject.

Mr. President, I do not want to spend too much time, yet I must take a minute to call the attention of the Senate to the adjudications that have been made by the court. One of the last cases decided by the Supreme Court was that of the State of Kansas against the State of Colorado. It was not a very satisfactory decision in some particulars, but it decided some things positively. This is what is decided in that case: That the State may determine whether the old doctrine of the common law as to streams shall prevail or another and different rule; that this is a Government that can claim no powers not granted to it by the Constitution; the Government of the United States is one of delegated and limited and enumerated power. (See p. 13 of the opinion in pamphlet.)

It is still true that no independent and unmentioned power can pass to the National Government or can be rightly exercised by Congress. (P. 13 of pamphlet.)

Referring to the second paragraph of section 3 of Article VIII, which gives Congress power to dispose and make all needful regulations respecting territory and other property of the United States, the court says:

> But clearly it does not grant to Congress any legislative control over the States, and must, so far as they are concerned, be limited to authority over property belonging to the United States within their limits. (See p. 14.)

But the proposition that there are legislative powers affecting the nation as a whole, which belong to although not expressed in the grant of powers, is in direct conflict with the doctrine that this is a Government of enumerated powers (p. 14).

RECLAMATION.

The court sustains the reclamation laws because the Government is the owner of large areas of land within the States where the system is to be applied, and specifically declares that this system could not be applied to States where the Government did not own land (p. 16). But did not declare the water belonged to the United States and said nothing that can authorize its control by the Government as against the State.

But in sustaining the law of reclamation, the court says:

> We do not mean that its legislation can override State laws in respect to the general subject of reclamation (p. 16).

That the land under the streams navigable both above and below high tide belongs to the States, and, speaking of such lands, the court says:

> It properly belongs to the State by their inherent sovereignty. Such title being in the State, the lands are subject to State regulation and control, under the condition, however, of not interfering with national regulations concerning public navigation and commerce (p. 17).

Again, the court says:

> It (the State) may determine for itself whether the common-law rule in respect to riparian rights or that doctrine which obtains in the West of the appropriation of water for the purpose of irrigation shall control (p. 17).
>
> Congress can not enforce either rule upon any State (p. 17).

The court in Kansas *v.* Colorado decided that the States owned their own waters, and it decided also that if a State did not choose to recognize the old common-law riparian rights the State had the power to change the law. Perhaps I need not dwell on that, but it is important in determining what are the rights of our Western States when it comes to the question of irrigation. We have abolished in most of the Western States the doctrine of riparian rights. The constitution of Colorado and that of some other States, although I will not undertake to say now of which States, provide that the water of the State belongs to the people of the State, and is under the control of the State and is not under the control of the people owning the land abutting on the rivers or streams.

The Supreme Court in the Colorado-Kansas case say that that is a right which belongs to the States to determine. We determined that. Wisconsin determined in 1846, if I recollect correctly, that the water belonged to that State. I think every States in the Western country where the question has ever been presented has so declared. Wisconsin declared it by statute. I think I could quote some others, but I am not going to try it.

Mr. President, there is another thing that I want to call attention to, which I think is very essential for us to understand. The Western States which are now young in years are sometimes supposed to have come into the Union on conditions different from those attaching to the original thirteen States. The Supreme Court has declared again and again that every State is the equal of every other State under the law, just as we say here that every Senator is the equal of every other Senator under the law. It may be a new State; it may be the last State; it may be the smallest in population or it may be the greatest; it has no other rights than any other State, and it rests under no burden that every other State in the Union does not rest under.

When a State is admitted to the Union it is on an equal footing with the original States. This is usually, if not always, so declared in the act of admission, but if that is not done, the situation or relation of the new State is the same as the other States, and the Supreme Court of the United States has repeatedly so declared.

I believe that every State that has been admitted—certainly all that have been admitted since I have had any knowledge of the matter—has come into the Union with a declaration that it came in on an equal footing with the other States. The Supreme Court in 1842 declared that Alabama was admitted exactly like and had the same power and was under the same obligations as the other States which came in under the original compact—the thirteen original States. An effort was made to show that there were some reasons why Alabama might have come in on different conditions and might stand on a different footing from the others. The court laid it down squarely in a case I shall cite later that Alabama had the same rights, not because there was a difference in the condition, not because she had been ceded by Georgia to the United States, but because of the fact that all the States were to come in on equal footing when they came in, and every State should stand alike in power and in right.

Now, of course, in the original States there was no Government land. The old original States owned the land, or if they did not, the people inside the States owned the land. There was no public land in the old original thirteen States. Virginia had a very large tract of land that was ceded to the United States; Connecticut ceded; Massachusetts ceded some land to the United States. That was mainly or perhaps entirely in Ohio.

Mr. President, the United States became a great landowner, and that is what I want to call attention to for a few minutes. It became a great land proprietor. I find that a good many of our people in these days suppose the Government of the United States holds this land as a sovereign. The Supreme Court has said and repeated it again and again that this nation holds its land not as a sovereign, but as a proprietor. We do not tax the public land. We do not tax it because we stipulated that we would not tax it. Both Judge Sawyer and Judge Field, who were both Federal judges, but prior to being Federal judges were California judges, have declared that but for that provision saying we would not tax the land, the Government of the United States would be compelled by law to pay taxes on the land, because the land was not held to perform a Government function. If it had been, there would have been a different ruling on that subject. The Supreme Court has said it so often that it is hardly worth while for me to cite what they have said about it. I want to read just what was said in the California case by Judge Sawyer, who is now dead, but who, I think, we all recognize as one of the great lawyers of this country. Judge Sawyer, in the case of People *v.* Shearer (30 California, p. 658), said:

> If it had not been for the stipulation to the contrary in the act of admission, the United States might have been required to pay taxes on the land owned by it situate within the limits of California, like any other proprietor of land. The relation of the United States to the public lands since the admission of California into the Union is simply proprietary—that of an owner of the lands, like any citizen who owns land, and not that of a municipal sovereignty.

See also 5 Minnesota, State *v.* Batchelder, page 234; 2 Minnesota, Camp *v.* Smith, page 155; and 12 Iowa, Stockdale *v.* Treasurer of Webster County, page 538.

Judge Field declared it when he was on the State bench, and he reiterated it from the Federal bench.

If it is asserted that the United States as the proprietor of the public lands becomes the owner of the water of the nonnavigable streams flowing over or along its land, the Government has by its legislation authorized the appropriation and use of the water of such streams; and the courts of California and the United States have treated the prior appropriation of water on the public lands of the United States as having the better right than the subsequent appropriator, on the theory that the appropriation was allowed by license of the United States, and after 1866 by statutes of the United States. (Lux *v.* Hagan, 10 Pacific Reporter, p. 721.)

And if the State does not own the water of the nonnavigable streams, the United States, as owner of the public lands, must, under the common-law rule of riparian ownership, when it conveys its right to the soil, conveys its right to the water, and the holder of the patent becomes the owner, and the Government has by such patent ceased to be the owner of such water. (10 Pacific Reporter, supra, 722.)

Unless running water (not navigable) is reserved, it passes by grant or patent, supra.

Of course there has been an argument made and frequently made that because the King of Great Britain held all of the lands and the title was in the King, it must be that the Government of the United States, being the sovereign, held the land as the sovereign. It has been so often declared by the court to be otherwise, in accordance with the decisions I have just read, that contention must be abandoned. We can not draw any inference from the fact that the King of Great Britain could parcel out the land and even sell the land under the rivers and bays. That can not be done by the United States. Neither can it be done by the States, according to the rulings of the court. I want to read from Angell on Tide Water. This is an authority which at least in former times was considered entitled to credit. I do not know whether it is now or not, but it was fifty years ago when I was a law student.

> These inherent privileges are those of navigation and fishery, privileges which are classed among those public rights denominated "jura publica" or "jura communia." Those are contradistinguished from "jura coronæ" or the rights of the Crown. They are said to exist of common right, which, according to Sir Edward Coke, is only another epithet for common law. The common law of England is known by the various appellations of "right," "common right," "public right," and "communis justitia." When, therefore, it is said a man has a thing by common right, it is understood that he has it by common law. The common law is furthermore denominated common right because it is the common birthright or inheritance which people have for the protection and safeguard of their privileges. "And it is the excellency," says Sir Edward Coke, "of common law that the receding from the true institutions thereof introduces many inconveniences, and that the observation of it is always accompanied by peace and quiet, the end and center of all human laws." (Angell on Tide Water, pp. 22 and 23.)
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> The right of property in tide waters, and in the soil and shores thereof, is "prima facia" vested in the King, to a great extent at least, as the representative of the public. To such an extent that to the right of navigation and fishery he has no other claim than such as he has as protector, guardian, or trustee of the common and public rights. Hence, the King has no authority, and since "magna charta" has never had, to obstruct navigation or to grant exclusive rights of fishing in an arm of the sea. (Angell on Tide Water, p. 22.)
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> And by the law of nations the use of the shore is also public, and in the same manner as the sea itself, and for this reason any person is at liberty to place a cabin there, in which he may harbor himself, and for the like reason to dry nets and draw them from the sea. By the common law, the waters of the sea and the shores of the same are as much subject to public use as they are by the civil law; but the essential difference above referred to between the two relates to what is just mentioned as the doctrine of the civilian, viz, that such waters are the property of no one. The policy of the common law is to assign to everything capable of occupancy and susceptible of ownership a legal and certain proprietor, and accordingly make those things which from their nature can not be exclusively occupied and enjoyed the property of the sovereign. The King in England is regarded as the universal occupant, and the presumption is that all property was originally in the Crown. Hence, it is said that all lands are holden mediately or immediately from the Crown, and that the King has the "absolutum et directum dominium"—a fiction of law adopted not for the aggrandizement of the throne, but for the benefit of the subject. (Angell on Tide Water, p. 22.)

Every reader of history knows that the King was not the original owner of the soil. The original owner of the soil in Great Britain and for a thousand years after the Romans settled in it were the people who occupied it and used it.

In the case of Smith *v.* Maryland (18 Howard, p. 74), Justice Curtis said:

> Whatever soil below low-water mark is the subject of exclusive propriety and ownership belongs to the State on whose maritime border and within whose territory it lies, subject to any lawful grants of that soil by the State or the sovereign power which governed its territory before the Declaration of Independence. * * *
>
> But this soil is held by the State not only subject to, but in some sense in trust for the enjoyment of certain rights, among which is the common liberty of taking fish, as well shellfish as floating fish.

While the State may own and does own the lands under these tide waters, it can not part with them in such a way as to interfere with the navigation of the waters.

In the case of United States *v.* William G. Cornell (2 Mason, p. 60), opinion by Justice Story, is found the following:

> The purchase of lands by the United States for public purposes within the territorial limits of a State does not of itself oust the jurisdiction or sovereignty of such State over such lands so purchased.

Mr. President, I want to show before I get through that the withholding of land from sale does not give the Government of the United States any right over it except that of a proprietor, except under that provision of the Constitution which authorizes Congress to dispose of and make all needful regulations.

Justice Story says further:

> Exclusive jurisdiction is the necessary attendant upon exclusive legislation. The Constitution of the United States declares that Congress shall have the power to exercise "exclusive legislation" in all "cases whatsoever" over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

There is not a man here who does not know that the fact that the Government has the title to the soil does not give it exclusive rights to govern it and does not deprive the State of its jurisdiction over it, because the courts have settled that often, as I shall show before I get through.

Justice Story continues:

> When, therefore, a purchase of land for any of these purposes is made by the National Government, and the State legislature has given its consent to the purchase, the land so purchased, by the very terms of the Constitution, ipso facto, falls within the exclusive legislation of Congress, and the State jurisdiction is completely ousted.

The United States may build a building, putting in any amount of money it may choose, and the State jurisdiction is not lessened or impaired in the slightest degree unless the State so declares it shall be. Justice Story also said—this is a declaration which I have no doubt some of our friends would question, but I believe it is the law, and I believe it can be supported—

> For it may well be doubted whether Congress are, by the terms of the Constitution, at liberty to purchase lands for forts, dockyards, etc., with the consent of a State legislature where such consent is so qualified that it will not justify the "exclusive legislation" of Congress there.

We have taken some land, you know, the State reserving to itself a quasi jurisdiction over it, and Story says in this very case I have cited that it is doubtful whether the Government can hold it under that quasi relation, but the Supreme Court, in what I shall call the "Leavenworth case," which I will cite later, held that such could be done.

Mr. President, fifty years ago Chancellor Kent was supposed to be good authority for almost any proposition of law. I myself doubt whether there has been any man in the United States since his death who was better qualified, or as well qualified, to determine questions of this character. In his lecture on real property he says:

> The sovereign is trustee for the public, and the use of navigable waters are inalienable. But the shores of navigable waters and the soil under them belong to the States in which they are situated as sovereigns. (3d vol. Kent, 13th ed., p. 427; Pollard *v* Hagan, 3 Howard, 212; Canal appraisers, 17 Wendell, 571; Gavit *v.* Chambers, 3 Ohio, p. 496.)

Mr. President, I do not want to take up the question and distinguish very much our condition in those States from some others. I am speaking now of the arid West. Our condition is different from what it is in other parts of the country. There are some sections in the State of Colorado that were under irrigation before Columbus discovered America. There are plenty of lands in the Territory of New Mexico and some in the Territory of Arizona that had been watered and cultivated under the laws then existing, crude as they may have been, long before Columbus sighted land in his famous voyage.

The use of water for irrigation in the arid region is a natural want, and the supreme court of the State of Ilinois, in the case of Evans *v.* Merriweather (3 Scammon, 495), where irrigation has never been very practical, says:

> In a hot and arid climate water, doubtless, is absolutely indispensable to the cultivation of the soil, and there water for irrigation would be a natural want.

I want Senators to keep that in mind. There is not a Western State that has not thousands of acres which, while the climate may not be torrid, fall under that description, and the use of water there for irrigation is a natural want.

In Evans *v.* Merriweather (3 Scammon, p. 495), the court said as I have read. Then the court adds, on page 496:

> From these premises would result this conclusion: That an individual owning a spring on his land, from which water flows in a current through his neighbor's land, would have the right to use the whole of it, if necessary, to satisfy his natural wants. He may conserve all the water for his domestic purpose, including water for his stock.

So far, then, as natural wants are concerned, there is no difficulty in finding a rule by which riparian proprietors may use flowing waters to supply such natural wants.

Mr. President, that is the law in a country where the riparian doctrine is in force.

Mr. PILES. Will the Senator permit me to interrupt him for a moment?

Mr. TELLER. Certainly.

Mr. PILES. I would just like to ask the Senator if I am understanding him correctly. I understand the Senator to make the point, or he is leading up to the point, that it is not within the power of Congress to charge for water taken out of the navigable rivers of the United States for irrigation purposes.

Mr. TELLER. I will say that that is my position, and I will demonstrate before I get through that it is absolutely absurd for Congress to claim the right to charge for water.

Mr. PILES. I am not antagonizing the Senator's position. I just wanted to get his line of thought as I thought I had it in my mind.

Mr. TELLER. I understand. I am going even further, for I am going to say it is absolutely not in the power of this Government of ours to prevent a citizen of my State from using the water for his natural wants, and that is irrigation. The Government might control it when we were a Territory, as they attempted to do, and did do. The Government may control how the water shall be carried across its lands; but when it comes to the beneficial use, the State only can determine how it shall be used and what use shall be made of it.

Mr. PILES. Then, as I understand the Senator, he takes the position that it is not within the power of Congress to exact a charge for water taken out of a navigable river for either power or irrigation, or, in fact, for any other purpose; he contends that that power belongs solely to the State.

Mr. TELLER. The Government has not the slightest interest in the water, not even in the navigable waters.

Mr. PILES. I get the Senator's position.

Mr. TELLER. The court has said that all the Government has in navigable water is an easement, the right to run a ship or a boat over it, the right to see that it is not obstructed. Of course that follows its right to regulate commerce.

Mr. PERKINS. Mr. President——

The PRESIDING OFFICER (Mr. DILLINGHAM in the chair). Does the Senator from Colorado yield to the Senator from California?

Mr. TELLER. I do.

Mr. PERKINS. May I ask the Senator from Colorado his construction of the law or if the courts have decided it in a case where the source of a stream is in one State and it flows through that State into another State or another Territory? Has the first State a right to appropriate the water and to deprive the second State through which the stream passes of the water?

Mr. TELLER. The court has held the right of the people of the State to use the water. There has not been a case, I will admit, where all the water has been appropriated, but the case that I cited from 3 Scammon, Evans *v.* Merriweather, holds that the man who has a running stream through his farm may use it all and let his neighbor go dry.

In England and in Massachusetts a man may, by appropriation, which is supposed to mean a grant originally, take out the water of a stream and absolutely control it to the extent that nobody else has anything to do with it. He can build a mill race, and if he has held it twenty-one years in New England and twenty-one years in England he becomes the absolute controller of that water.

Mr. President, much more is that the case in a country where the whole question depends as much upon water as upon air. You could no more live on thousands and thousands of square miles belonging to the United States unless you could put water on it than you could live if the air should be taken away. To take away the water would be equivalent to taking away your life.

Mr. PILES. I should like to ask the Senator from Colorado if he contends that it would be within the power of a neighboring State, subject to the paramount right of navigation, to dispose of the waters of a river flowing through the State to such an extent that there would remain no water in the adjoining State which might be used or disposed of by that State for irrigation or power purposes, because there would not be sufficient water, we will say, remaining in the river for that purpose without disturbing the navigation of the river?

Mr. TELLER. If the use of water for irrigation is a natural want, then the first appropriator may use it all, even to the destruction of those differently situated persons, just as you may save your life even at the expense of another.

That brings me to the question of what Congress has a right to do and what Congress would do if such a thing occurred. That question has never yet arisen. It probably never will arise.

Mr. PILES. I merely want to get the Senator's view on that point.

Mr. TELLER. I will take the Arkansas River. It runs a couple of hundred miles in Colorado; it runs down into Kansas, then it runs into Arkansas, and then it runs into the Mississippi and into the sea. That is not a navigable river until you get into lower Arkansas and in the Indian Territory. Then it becomes a navigable river.

This question might be presented, Mr. President. I want to be fair about it. Suppose that was a navigable river on which there was a great commerce up near Oklahoma, say, in the Indian Territory, and suppose Kansas and upper Arkansas and Colorado should use all the water so that there was no water along in that river. Then it would be a question as to what, under the power to preserve commerce, the Government could do. What do you suppose, Mr. President, a government would do? You must presume that whenever you legislate in Congress you legislate with respect to the interests of the whole people—the greatest good to the greatest number. If you have a million people in Kansas, a million people in Colorado, and a half million more perhaps in Arkansas using this water, would anybody suppose that the United States, unless there was a tremendous necessity for it, would intervene and say you could not use that water? Would you make it a desert? That is the question the Supreme Court put the other day in the Colorado case. They did not decide it; they only said that is where it might go. We have not got there because we have never used all the water of that river; it has run across into Kansas. We have minimized it, they say, somewhat; we have not destroyed it; but in ten years after the irrigation begins the river where it crosses the line will be a larger river than it was before, except in flood time.

Mr. President, I will be diverted a moment just to mention one thing that has happened in my part of the country. We have an irrigating country. We have irrigated there for forty-five years. I do not like to bring myself particularly into evidence in a matter of this kind, but I have had absolute, actual, positive knowledge of irrigation for almost fifty years. I have seen water spread out on the land, and I have seen the desert where there was not grass enough to keep a goat on an acre selling for $200 an acre because of its fertility by the use of water. This is in the State of Colorado. Our farmers this year had $11,000,000 paid to them for beets that they have raised on irrigated land. Twenty million dollars will be paid in Colorado this year, and not a beet would have been raised, not a pound of sugar would have been made, except for the fact that we were allowed to use the water that flows down eventually into the Mississippi River and thus goes into the sea.

Could a better use be made of it, Mr. President? We have built up there a civilization that has no superior on the American continent. From Denver to Fort Collins, 75 miles, there is an unbroken farm. I doubt whether there is to-day another equal area in the United States that would sell for as much money or that will produce as much to the men who till it. Without water, I repeat, it would be a desert. I have seen it when it would not produce anything but the wild grass, and not much of that.

I am not going to be anxious as to what will happen when we have used up all the water, because we know that Congress will never make a desert of a country like that in order that a few boats may run on the lower Arkansas River. I do not know but the Government could do it, but a government that would do that would not last very long, in my opinion.

Mr. President, I did not intend to take up the irrigating question, but I am brought into it by the suggestion made by the Senator from Washington, which is one that has presented itself to me many times. I prepared an article on that subject. I said when we have destroyed the commerce on any river, then it will be time enough for the Government to complain, and then the question will be, What will the Government do? I assume that it would do what an individual would do. If an individual owned the whole property, he would preserve that which was the most beneficial to the human race.

Mr. President, we are met now by the claim that the Government of the United States owns the water in the State of Colorado; that the Rio Grande River, a river running into the Gulf of Mexico, is under the control of the United States. I deny that. I deny that the Government of the United States has any control over the water that is in the State. It has of

course absolute control over the water of the Territory of New Mexico, and that question probably will be presented some day. There is a little boat down on the lower Rio Grande River running up 70 miles from the Gulf once a week. Mr. President, there is more for human happiness in a square mile of irrigated land in New Mexico than there is in running a boat once a month or once a week or once a day on that river. The great interest of the agriculturists will give way when the time comes, if it ever does come, not while the people are sane, but only when power shall simply desire to exercise itself to show what it can do. That time will never come, in my opinion, in the Congress of the United States.

Mr. President, I have been somewhat diverted, but I do not know that I care; it gives me at least an excuse for saying some things that perhaps I would not otherwise say. I appeal to some Senators who hear me. I know that they have seen the same things that I have. I know that the California Senators have seen it. I know that they have seen a country made a garden where it was a desert. I have been in the Territory of Arizona and I have seen where there was no more grass on an acre than there is on this floor to-day, and yet I have seen in ten or twelve years the country blossom. I have seen fine roses; I have seen lemons, oranges, figs, grapes, and dates growing where a few years ago there was an absolute desert.

Mr. President, one-third of this whole country must be irrigated, and when it is irrigated that third will produce more that goes to make life endurable in the country than the remaining two-thirds. In the country west of the Mississippi River, not all arid, but more than three-fourths of it arid, we produce more than one-half of the wheat of the United States. We produce more cattle than any other section of the country. We produce more sheep. We produce nine-tenths of the wool that is produced. Are you going to dedicate a country like that to silence and solitude because the Government of the United States has control of the waters? I deny that the Government has control, and I deny, too, that you would do it even if the Government had control. Our safety lies, and we intend to stand by it, in holding that the water belongs to the State and that we mean to keep it.

Mr. President, I want to cite another authority as to the proprietorship of the United States simply in its lands. If the Government of the United States is the sovereign and holds it by sovereign power, then we are the serfs of the General Government. We are not.

I have another California case. I cite this, for that was the first section of the country where irrigation began in earnest, except the little that was in New Mexico, Arizona, and in southern Colorado, which was exceedingly small and of but little value. As I said, undoubtedly that had been in existence long before the discovery of America.

Mr. SUTHERLAND. Mr. President, I call the attention of the Senator from Colorado to the fact that irrigation in the Western country began in my own State before it did in any other State, before it did in California. As early as 1847 the people of Utah were successfully irrigating their land.

Mr. TELLER. Mr. President, I overlooked that, because the Utah people did not make quite as much noise over it as our friends from California did.

Mr. SUTHERLAND. We never do.

Mr. TELLER. But, Mr. President, I can testify in support of my friend from Utah. I saw almost fifty years ago the irrigation of Utah. It was the first large irrigation I had ever seen, or which, I think, perhaps, at that time, any American had seen, because California was really a cattle country for many years and not an agricultural country.

What I have said about Colorado as to prosperity may be said about some parts of Utah, and many parts of it, too, for that matter.

Judge Sawyer, in the case of Woodruff *v.* North Bloomfield Gravel Mining Company (18 Federal Reporter, p. 772) said:

> Upon the cession of California by Mexico—

Mr. President, I cite this because some people will say, as I have heard it said:

> Why, of course there is a difference between the land that was ceded by Virginia to the Government and the land that the Government got from Mexico.

I want to show that the doctrine is the same:

> Upon the cession of California by Mexico, the sovereignty and the proprietorship of all the lands within its borders, in which no private interest had vested, passed to the United States. Upon the admission of California into the Union, upon an equal footing with the original States, the sovereignty for all internal municipal purposes, and for all purposes except such purposes and with such powers as are expressly conferred upon the National Government by the Constitution of the United States, passed to the State of California. Thenceforth the only interest of the United States in the public lands was that of a proprietor, like that of any other proprietor, except that the State, under the express terms upon which it was admitted, could pass no laws to interfere with their primary disposal, and they were not subject to taxation. In all other respects the United States stood upon the same footing as private owners of land.

Mr. President, that has been the law repeatedly declared in other cases. Again, it was said in the same State, but in the Federal court, by the Supreme Court of the United States:

> This is a Government by law and not by men.

By this it is meant that the Government must be administered by laws enacted by the proper authority—that is, by the legislative department.

This means that no man, whatever his position may be, can substitute his will or his opinion for the law. If he is an executive officer he must be governed by law. He must act in accordance with the law as declared by the legislative department.

The ninth circuit court has said:

> As to nonnavigable waters, Congress has nothing to do with them beyond the rights of the United States as a riparian proprietor, which are the same as the rights of other riparian proprietors, except it might limit the right of purchase from the Government of lands owned by it and sold subsequent to the passage of the act under which such land sales were made. (Woodruff *v.* The Bloomfield Gravel Co., 18 Fed., p. 772.)

Speaking of the admission of California as a State, the judge said:

> Thenceforth the only interest of the United States in the public lands was that of a proprietor, like that of any other proprietor, except that the State, under the express terms upon which it was admittted, could pass no laws to interfere with their primary disposal, and they were not subject to taxation. In all other respects the United States stands upon the same footing as private owners of land.

The United States, in the disposal of its lands, acts as a proprietor and not as a sovereign.

In the case of Pollard's Lessees *v.* Hagan, which I have before cited, the Supreme Court said, speaking then of this provision, but in the State of Alabama, that they would not interfere with the primary disposal of the soil by the Government and would not tax. That has since been put in all the States, I guess, where there was any public land, at least. The court says:

> This authorized the passage of all laws necessary to secure the rights of the United States to the public lands and to provide for the sale and to protect them from taxation. (3 Howard, 225, or 15 U. S., 397.)

With the admission of a State the navigable waters of the State and the land under them became the property of the State, and also the nonnavigable water became subject to the sovereignty of the State and not that of the nation. The General Government can only exercise sovereignty when the Constitution provides it may or it follows logically from provisions of the Constitution.

The Supreme Court, in the case heretofore cited of Pollard *v.* Hagan, declared that—

> The National Government does not hold the public lands by municipal sovereignty it may be supposed to possess or have reserved by compact with the new State for that purpose. (3 Howard, 227, or 15 U. S., 396.)

It may be claimed that the case of Pollard *v.* Hagan is not in point, because Georgia had made a cession of part of its territory for the purpose of creating the State of Alabama, but the United States had claimed the lands of Alabama by virtue of the purchase from France in 1803.

The Supreme Court of the United States, after considering the question of the right of the Government of the United States to the lands in Alabama, says, in the case of Frank *v.* Neilson (2 Peters, 309; 15 U. S., 116):

> So that Alabama was admitted to the Union as an independent State in virtue of the title under the treaty of April, 1803.

The court declared that the Government held the lands just as it held other lands, and there was no exception, and the court declared also, over and over again, that the United States held them in trust for the public. I call attention to the summary in this case. It is a very long case. This is the case of Pollard's Lessee *v.* Hagan et al., decided in 1845 by the Supreme Court of the United States, which will be found in 3 Howard, page 230. The court says, after a considerable discussion and argument:

> By the preceding course of reasoning we have arrived at these general conclusions: First, the shores of navigable waters and the soils under them were not granted by the Constitution to the United States, but were reserved to the States respectively. Second, the new States have the same rights, sovereignty, and jurisdiction over this subject as the original States.

This was the original declaration of the supreme court of Alabama, which the United States court took up and approved:

> Third, the right of the United States to the public lands and the power of Congress to make all needful rules and regulations for the sale and disposition thereof conferred no power to grant to the plaintiffs the land in controversy in this case. The judgment of the supreme court of the State of Alabama is therefore affirmed.

Mr. President, I have here a good deal of material that I am going to skip. I shall be glad if any Senator would like to look over it any time to furnish him a list of authorities I have not time to read. I have furnished it to some of my acquaintances.

Mr. PILES. I suggest that the Senator put them in the RECORD, anyway.

Mr. TELLER. I will put in enough of them. I can cite, I think, at least forty decisions of the Supreme Court practically to the same effect. The courts have spent a good deal of time determining what was a shore and what were the rights of the abutting landowners, and so forth. I do not care to go into that, because while I believe California still maintains the riparian doctrine, that is, I think, the only Western community that does. I do not know about Washington, but I know that Montana and Idaho and some other States do not.

I have tried to select a few of these, so as to show that it was not the same judge making the same decisions, but that different judges were passing upon this question, all coming out at the same place.

Chief Justice Waite, in the case of McCready *v.* Virginia (94 U. S., p. 394), said:

The precise question to be determined in this case is whether the State of Virginia can prohibit the citizens of other States from planting oysters in Ware River, a stream in that State where the tide ebbs and flows, when its own citizens have that privilege.

This is a navigable water.

The principle has long been settled in this court that each State owns the beds of all tide waters within its jurisdiction, unless they have been granted away. (Pollard's Lessee *v.* Hagan, 3 How., 212; Smith *v.* Maryland, 18 How., 74; Mumford *v.* Wardwell, 6 Wall., 436; Weber *v.* Harbor Commissioners, 18 id., 66.) In like manner, the States own the tide waters themselves, and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its people, and the ownership is that of the people in their united sovereignty. (Martin *v.* Waddell, 16 Peters, 410.)

This is taken from the decision:

The title thus held is subject to the paramount right of navigation, the regulation of which, in respect to foreign and interstate commerce, has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the exclusive control of the State, which has consequently the right, in its discretion, to appropriate its tide waters and their beds to be used by its people as a common for taking and cultivating fish, so far as it may be done without obstructing navigation.

Mr. Justice Field, speaking of the condition of California, in the case of Weber *v.* Harbor Commissioners (18 Wallace, p. 65), said:

Although the title to the soil under the tide waters of the bay was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future State. Upon the admission of California into the Union upon equal footing with the original States, absolute property in and dominion and sovereignty over all soils under the tide waters within her limits passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject only to the paramount right of navigation over the waters, so far as such navigation might be required by the necessities of commerce with foreign nations or among the several States, the regulation of which was vested in the General Government.

Not many members of the Senate were born when this decision I am going to read was made. In the case of Corfield *v.* Coriel, reported in the Fourth Washington Circuit Reports, opinion by Justice Washington, the court says (p. 379):

The grant to Congress to regulate commerce on the navigable waters belonging to the several States renders those waters the public property of the United States, for all the purposes of navigation and commercial intercourse, subject only to Congressional regulation. But this grant contains no cession, either express or implied, of territory or of public or private property. The "jus privatum" which a State has in the soil covered by its waters is totally distinct from the "jus publicum" with which it is clothed. The former, such as fisheries of all description, remain common to all the citizens of the State to which it belongs, to be used by them according to their necessities or according to the law which regulates their use.

In the case of Mumford *v.* Wardwell, in 1867 (6 Wallace, 435 and 436), the Supreme Court held, in a case that came from California, as follows:

California was admitted into the Union September 9, 1850, and the act of Congress admitting her declares that she is so admitted on equal footing, in all respects, with the original States.

I think that is found in every act of admission—

The settled rule of law in this court is, that the shores of navigable waters and the soils under the same in the original States were not granted by the Constitution to the United States, but were reserved to the several States, and that the new States since admitted have the same rights, sovereignty, and jurisdiction in that behalf as the original States possess within their respective borders.

When the Revolution took place the people of each State became themselves sovereign—

Mr. President, you want to keep in mind that there was no sovereign that had the power over all these colonies. The court continues—

and in that character hold the absolute right to all their navigable waters and the soils under them, subject only to the rights since surrendered by the Constitution.

Necessary conclusion is, that the ownership of the lot in question—

which was under water—

when the State was admitted into the Union, became vested in the State as the absolute owner, subject only to the paramount right of navigation. (6 Wallace, pp. 435–436.)

That is the Alabama case, where they had filled up the river and made the land.

Mr. PERKINS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Colorado yield to the Senator from California?

Mr. TELLER. I do.

Mr. PERKINS. I would state to the Senator from Colorado the fact, which he will remember, that in making appropriations—and I have been associated with him upon committees—that he has always insisted in every case of a proposed improvement bordering on tide lands or overflowed lands, that there should be an easement granted by the State to the General Government.

The Navy Department of the Government especially has declined in numerous instances in California to make an expenditure for a naval station, as has the Treasury Department, for light-house stations and other fortifications in California, until the easement of the State to the overflowed or tide lands is ceded to the General Government.

Mr. TELLER. Mr. President, that is a fact, because we have been of the opinion that the State had control over those waters, of course subject to the right to pass over the navigable waters; but that the land adjoining those waters, which was necessary for the use of the Government in connection with its work, belonged to the States and must be ceded by the States.

As I have said, Mr. President, the court has held in two or three cases—and one of those I shall probably cite if I do not overlook it—that the only authority the Government has got is to regulate the agencies of commerce on the rivers—that they have no title in the water; in other words, the courts say the Government has an easement on the water; and that is all there is of it.

Mr. President, I ask leave to put in some of this matter without reading it, if no one objects.

The VICE-PRESIDENT. Without objection permission is granted.

The matter referred to is as follows:

By the English common law a river is navigable as far as the tide flows, upon the theory that it is a part of the sea.

This doctrine was all right in England, where the rivers are short and where the tides flow even above where they are navigable in fact. But in the United States rivers are navigable in law as far as they are navigable in fact, and no attention is paid to whether the tide flows or not.

By the English common law the Crown owns the land covered by the water of navigable streams in trust for the public use.

According to the English common law every river is navigable as far as the tide ebbs and flows and it is a royal river and belongs to the King by virtue of his prerogative, but in every other river, even if navigable in fact, there the King's prerogative does not attach, but the right of public use does attach. They are, as the authorities declare, "under the servitude of the public interest," to be used as water highways. They are public rivers, not as to their shores or the land under them, for these are in the riparian proprietors, but only in reference to public use.

At common law land bounded by a river extends to the center of the stream. In Alabama the streams that are navigable in fact the owners of land bound upon it can not assert their right to the soil under the stream.

The right of navigation under both civil and common law is a paramount right. This right is so important that even the sovereign can not obstruct it, nor can the United States.

The King of England can not assert his prerogative to obstruct navigation.

What is the shore?

A piece of land bounded on the shore of the sea or a river.

By the civil law the shore is where the highest tide comes or where the greatest wave extends during the winters.

By the common law the shore is the point where the ordinary tide stops. The shore of a river is at common law the point of ordinary flow.

In Massachusetts the shore is where the sea stands at ordinary times. In the United States admiralty jurisdiction extends to water in fact navigable.

It is a well-established principle of law that nothing passes as incident to an easement but that which is requisite to a fair enjoyment of the right. (5 Mason, 195, 3 Kent Commentaries, 432; Commissioners of the Canal Fund *v.* Kemshall, 26 Wendell, 414.)

Chief Justice Shaw said: "We can not doubt that navigable streams may cease to be such by appropriation of the soil under legislative authority to other purposes." (Commonwealth *v.* Charlestown, 1 Pickens, R. 180.)

The General Government has the right to regulate commerce, and so forth, as provided in paragraph 3 of section 8 of the Constitution, but this does not give Congress any title to the agencies of commerce, rivers and lakes, any more than it does to the railroads of the country.

All that Congress is authorized to do is to regulate commerce, and the control of Congress is limited to the exercise of such powers as are necessary to regulate commerce. The State owns the lands under navigable waters.

The Supreme Court of the United States in the case of the City of Mobile *v.* Eslava (16 Peters, p. 277) says:

The United States then may be said to claim for the public an easement for the transportation of merchandise, etc., in the navigable waters of the original States, while the right of property remains in the States.

The original States possessing this interest in the waters within their jurisdictional limits, the new States can not stand upon an equal footing with them as members of the Union if the United States still retain over their navigable waters any other right than is necessary to the exercise of its constitutional powers. To recapitulate, we are of opinion: First, that the navigable waters within this State have been dedicated to the use of the citizens of the United States, so that it is not competent for Congress to grant a right of property in the same. * * *

In Martin et al. *v.* Waddell, the court said:

When the Revolution took place the people of the Eastern States became themselves the sovereign, and in that character hold the absolute right to all the navigable waters and the soil under them for their own common use, subject only to the right since surrendered by the Constitution of the United States to the General Government. (16 Peters, 411.)

In the act of Congress providing for the admission of Alabama as a State Congress provided that certain things should be included in the Constitution, as follows:

That the people of Alabama forever disclaims all right and title to the waste or unappropriated lands lying within the State, and that the same shall remain at the sale and disposition of the United States.

Also, that all navigable waters within the State shall forever remain public highways, free to the citizens of that State and the United States, without any tax, duty, impost, or toll thereon imposed by that State.

These provisions were inserted in the constitution of Alabama, which was approved by Congress by a resolution adopted December 14, 1819, in words as follows:

Resolved, That the State of Alabama shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatsoever.

Mr. TELLER. Speaking of the compact which was made that Alabama should not tax the land, and so forth, the court continues:

This supposed compact is therefore nothing more than a regulation of commerce to that extent among the several States and can have no controlling influence in the decision of the case before us. *This right of eminent domain over the shores and the soils under the navigable waters for all municipal purposes belongs exclusively to the States within their respective territorial jurisdictions, and they, and they only, have the constitutional power to exercise it.* To give to the United States the right to transfer to *a citizen the title to the shores and the soils under the navigable waters would be placing in their hands a weapon which might be wielded greatly to the injury of State sovereignty and deprive the States of the power to exercise a numerous and important class of police powers.* (See p. 230.)

And the court concludes as follows:

By the preceding course of reasoning we have arrived at these general conclusions: First, the shores of navigable waters and the soils under them were not granted by the Constitution to the United States, but were reserved to the States, respectively. Second, the new States have the same rights, sovereignty, and jurisdiction over this subject as the original States. Third, the right of the United States to the public lands, and the power of Congress to make all needful rules and regulations for the sale and disposition thereof, conferred no power to grant to the plaintiffs the land in controversy in this case.

The Supreme Court of the United States said in 1842, in the case of Martin *v.* Waddell (16 Peters, p. 411; 14 U. S. Repts., p. 349):

When the Revolution took place, the people of each State became themselves sovereign, and in that character hold the absolute right to all their navigable waters and the soil under them for their common use, subject only to the rights since surrendered by their constitutions to the General Government.

If the States took the absolute title to the navigable waters, they certainly did to the nonnavigable waters.

Congress can not interfere with waters of a State, except it may be necessary to protect the navigability of a navigable stream, and the courts have held that that provision of the Constitution did not give the Government any title to or control over the waters of the rivers in the States.

I do not care to enter into any discussion here, but I think that will be admitted. If the Government did not have any title to waters upon which it runs its ships, it certainly did not over trout streams that run into and make up the river.

The Supreme Court of the United States, in 16 Peters, said:

The United States may be said to claim for the public an easement for the transportation of merchandise, and so forth, in the navigable waters of the original States, while the right of property remains in the States. (See Mobile *v.* Eslava, 16 Peters, 253; 14 U. S. Repts., p. 277.)

The court in the last-cited case says:

The original States possessing this interest in the waters within their jurisdictional limit, the new States can not stand upon an equal footing with them as members of the Union if the United States still retain over their navigable waters any other right than is necessary to the exercise of its constitutional powers.

Mr. PILES. Will the Senator permit me to call his attention to one fact?

The VICE-PRESIDENT. Does the Senator from Colorado yield to the Senator from Washington?

Mr. TELLER. I do.

Mr. PILES. In that connection I should just like to call the attention of the Senator from Colorado to the fact that the State of Washingon, at the time it adopted its constitution, did not take any chance on its ownership in the beds, shores, and so forth, of the navigable streams of that State.

Mr. TELLER. I shall be glad to have the Senator read the provision.

Mr. PILES. The provision of the constitution of the State of Washington is as follows:

SECTION. 1. The State of Washington asserts its ownership to the beds and shores of all navigable waters in the State up to and including the tide of ordinary high tide, in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes.

That is along the idea which the Senator from Colorado has been discussing.

Mr. TELLER. The court also stated in the case I have just cited—that of the city of Mobile *v.* Eslava:

That such rivers (navigable rivers) are common for navigation and commerce in the widest sense is free from doubt—that Alabama has jurisdiction and power over them the same as the original States have over their navigable waters is equally clear. (Mobile *v.* Eslava, U. S. Rept. 14, p. 279.)

In the same case, on page 259, the court said:

That each and all of the States have sovereign power over their navigable waters above and below the tide no one doubts. (282 U. S., 14.)

The State may bridge and dam navigable streams if Congress has not declared them navigable waters. This the State is not likely to do if such bridge or dam destroys the navigability of the stream. (See Wilson *v.* Blackbird Creek, 2 Peters, p. 245; Gilman *v.* Philadelphia, 3 Wall., p. 713, and Pound *v.* Turck, 95 U. S., p. 459.)

The courts have held that the exercise of such power by the State is not inconsistent with the object for which the Federal Government was established.

Mr. President, it may be inquired how the original States got these rights. Some of them got them by virtue of their charters. Some of them assumed such rights simply as sovereign States, and you can not trace them back—at least I have not been able to do so—to any authority in some of the colonies that became States. Some of the old colonies asserted that right because there seemed to be a notion that it belonged to the sovereign in England; that it belonged to the King. Take Connecticut. It did not have a charter at all. If it did, I do not remember what it was.

Mr. BACON. Oh, yes.

Mr. TELLER. I think Connecticut had a charter that was taken away.

Mr. BACON. The Senator will recall the story of the Charter Oak.

Mr. TELLER. Mr. President, Rhode Island did not have a charter. Rhode Island was settled by a lot of tramps, who went there carrying with them their notions of free government and all that. When the trouble came Rhode Island, although small in extent, was just as big in law as any of the other States.

In the case of Mobile *v.* Eslava (16 Peters, p. 253) the Supreme Court says:

That the original States by their colonial charter had the right of *property in bays and arms of the sea.* This they *retained*, and it can *only be interfered with* by the Federal Government under their right to regulate commerce so far as to furnish a free navigation. The United States, then, may claim for the public an easement for transportation of merchandise, etc., in the navigable waters of the original States, while the right of property remains in the States.

The court also says in the Mobile case:

That each and all the States have sovereign power over the navigable waters above and below the tide, no one doubts. (See p. 259.)

If sovereign over navigable waters, is there any reason to say the States are not sovereign over the nonnavigable waters? How did the States retain their right? They retained it by withholding it from the General Government.

Mr. SUTHERLAND. Mr. President——

The VICE-PRESIDENT. Does the Senator from Colorado yield to the Senator from Utah?

Mr. TELLER. I do.

Mr. SUTHERLAND. I do not want to interrupt the course of the Senator's argument.

Mr. TELLER. You will not interrupt me at all; it will not interfere with me.

Mr. SUTHERLAND. If the Senator's argument that far is sound—and, personally, I want to say to the Senator that I am in entire sympathy with him—I want to ask whether it does not inevitably lead to the final conclusion that the only authority which the General Government has in the matter of granting the right to build dams, bridges, and so on, across navigable rivers is simply to see that the right of navigation is protected, and that the General Government has absolutely no authority or power whatever to charge a fee to any person or corporation either for the use of the water for irrigation or for the generation of power or for any other purpose?

Mr. TELLER. Certainly. The Government can not control the water of the Mississippi River, for instance.

Mr. SUTHERLAND. I want to ask the Senator further, if that is so with reference to navigable streams, whether or not his argument will not apply all the stronger to the case of nonnavigable waters, such as exist in the irrigation States?

Mr. TELLER. Undoubtedly. There is not a provision in the Constitution anywhere that would indicate that anybody supposed the General Government would have anything to do with such waters or their shores or the land under them. All the Government can do is to regulate the commerce on the streams. The Constitution does not say "commerce on the streams," but at that time there was no commerce at all except what was on the water, the rivers, lakes, etc.

Mr. President, I will not stop to read the decision, but the Supreme Court of the United States has declared that the soil in front of Chicago under the navigable waters of Lake Michigan is the property of the State of Illinois, and not of the United States.

The Senator from Utah calls my attention to the difference between nonnavigable and navigable streams. As I said, under the English law waters are navigable just to the extent that the tide ebbs and flows. The Supreme Court of the United States settled that question many years ago.

They said that doctrine would not answer our purposes; that it was a question of fact; that if, for instance, the Mississippi River was navigable to St. Paul the river would still be under the control of the Government under the commerce clause; in other words, that the admiralty jurisdiction of the United States attached to matters arising in those waters. But the Supreme Court has repeatedly held—the most recent case is the case of Escanaba *v.* City of Chicago, decided in 107 United States, although there is another case in 3 Wallace, the case of Philadelphia *v.* Gilman, of the same general character. This was a Pennsylvania case. In the Escanaba case the court went into the question pretty extensively, and held that until Congress had declared that the river was navigable the State might bridge it. They made that decision largely on what was called the "Blackbird Creek case," which was decided at least sixty-five years ago, the decision being rendered by Chief Justice Marshall. In that case a town in Delaware, or the State of Delaware, had put a bridge across Blackbird Creek. It was a navigable stream, but it had never been declared by the United States to be navigable, and the attempt to take the bridge down was resisted. The court held that until Congress had declared that that was a navigable stream they would not interfere.

Afterwards in the State of Wisconsin some people built a bridge over the Chippewa River. It was a navigable river. There was not any question about that at all. They were indicted and brought into court, but the Supreme Court of the United States held that they had committed no offense; that inasmuch as the State authorized them to build the bridge, they could build it, unless Congress had intervened and said they should not build it.

Mr. President, if I should attempt to read all of these cases I think I should be here until to-morrow morning, and I do not want to do that. I desire, however, to cite the case of the Illinois Central Railroad Company *v.* Illinois, decided in 1892 by the Supreme Court of the United States, and reported in 146 United States, page 435. The court says:

> It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tide waters, within the limits of the several States, belong to the respective States within which they are found, with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in the waters, and subject always to the paramount right of Congress to control their navigation so far as may be necessary for the regulation of commerce with foreign nations and among the States. This doctrine has been often announced by this court, and is not questioned by counsel of any of the parties. (Pollard's Lessee *v.* Hagan, 3 How., 212; Weber *v.* Harbor Commissioners, 18 Wall., 57.)

This case arose with reference to the lake front at Chicago, and they held that it belonged to the State. The court also states, on page 452:

> That the State holds the title to the lands under the navigable waters of Lake Michigan within its limits, in the same manner that the State holds title to soils under tide water, by common law, we have already shown, and that title necessarily carries with it control over the waters above them whenever the lands are subjected to use. But it is a title different in character from that which the State holds in lands intended for sale. It is different from the title which the United States hold in the public lands which are open to preemption and sale. It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction of interference of private parties.

That is the language of the court. Again, on page 454, the court holds that while the State holds the land under the rivers and lakes, and control over the same, yet the State can not part with its title to such an extent as to prevent the public use of such property. The court says:

> The harbor of Chicago is of immense value to the people of the State of Illinois in the facilities it affords to its vast and constantly increasing commerce; and the idea that its legislature can deprive the State of control over its bed and waters and place the same in the hands of a private corporation—

That is what the State undertook to do—

> created for a different purpose, one limited to transportation of passengers and freight between distant points and the city, is a proposition that can not be defended.

Again, on page 459, the court say:

> The soil under navigable waters being held by the people of the State in trust for the common use and a portion of their inherent sovereignty, any act of legislation concerning their use affects the public welfare. It is therefore appropriately within the exercise of the police power of the State.

On page 434 the court say:

> The State of Illinois was admitted into the Union in 1818 on an equal footing with the original States in all respects. Such was one of the conditions of the cession from Virginia of the territory northwest of the Ohio River, out of which the State was formed. But the equality prescribed would have existed if it had not been thus stipulated. There can be no distinction between the several States of the Union in the character of the jurisdiction, sovereignty, and dominion which they may possess and exercise over persons and subjects within their respective limits.

In the case of New Orleans *v.* United States, in 10 Peters, 317, the court say:

> The Government of the United States, as was observed in the argument, is one of limited powers—

I do not think, Mr. President, you can repeat that too often—

> The Government of the United States, as was observed in the argument, is one of limited powers. It can exercise authority over no subjects except those which have been delegated to it. Congress can not by legislation enlarge the Federal jurisdiction, nor can it be enlarged under the treaty-making power.

Vattel says:

> It is the universal rule that water can not be diverted from a public navigable river without the consent of the State within which it lies. (See Vattel, chap. 2, p. 249.)

In the case of Pollard's Lessee *v.* Hagan (3 Howard) the court said, on page 224:

> The right of Alabama and *every other new State* to exercise all the powers of government which belong to and may be exercised by the original States of the Union must be admitted and remain unquestioned, except so far as they are temporarily deprived of control over the public lands.

The court also said:

> Every nation acquiring territory, by treaty or otherwise, must hold it subject to the constitution and laws of its own government and not according to those of the government ceding it. (Vat. Law of Nations, b. 1, c. 19, secs. 210, 214, 245, and b. 2, c. 7, sec. 80.)

The Supreme Court, in the Pollard case, said:

> Then to Alabama belong the navigable waters and soils under them in controversy in this case, subject to the rights surrendered by the Constitution to the United States, and no compact that might be made between her and the United States could diminish or enlarge these rights. (Pollard's Lessee *v.* Hagan, 3 Howard, p. 229, 15 U. S., 402.)

In the case of the City of Mobile *v.* Eslava, reported in 1842 (16 Peters, p. 254), the court says, in speaking of the reservations of public lands which are found in all new States:

> The clause inserted into the constitution of Alabama reserving the rights of property to the United States as a compact with them embraces lands under water as emphatically as those not covered with water. But if no stipulation, saving the interest of the United States had been made, they would have had just as much right to their private property as an individual had to his. They hold, as a corporation, an individual title. * * * The United States, as owner, can do no act to obstruct the free public use of the waters more than a private owner of the soil under water could obstruct the navigation.

But in 1845 the court, in the case of Pollard's Lessee *v.* Hagan, determined that the fee of land under the navigable waters was the property of the State, and this has been the decision of the court in repeated cases ever since. (See Pollard's Lessee *v.* Hagan, 3 Howard.)

It is needless to say if *no* right of property exists in the United States in navigable rivers there is none in the nonnavigable waters. (See 3 Howard, Ohio Repts., Gov't *v.* Chambers, 498.)

The water of navigable rivers can not be obstructed by the State or individuals, if Congress declares that it is a navigable river, not because the United States owns the river, but because

as an agency of commerce Congress can prevent its obstruction to navigation in the protection of interstate commerce.

In one case the court has said, "That the navigable rivers are the public property of the nation" (Gilman *v.* Philadelphia, 3 Wall., 725), but in many other cases it has been held that the United States has no property in the river and *only an easement* on the right, and the States own the river, subject to the right of commerce, which the Government of the United States must regulate and protect, and the State can not interfere with such regulation.

Again, the court quotes from the case of Pollard's Lessee *v.* Hagan (3 Howard, p. 230):

The right of eminent domain over the shores and soil under the navigable waters for all municipal purposes belongs exclusively to the States within their respective territorial jurisdiction, and they, and they only, have the constitutional power to exercise it.

It is evident the court did not in the Gilman case intend to assert a property right to their rivers in the usual sense in which we speak of property right. A mere easement is not a property right, and the court in the Gilman case holds that pilot laws are a regulation of commerce, but if enacted in the interest of commerce they are not in conflict with the power of Congress to regulate commerce. (See 727.)

But if Congress has passed no law with reference to commerce on a river the State may authorize a dam across a navigable stream. (See Wilson *v.* Black Bird Creek Marsh, 2 Peters, 250.)

In the case of Pennsylvania *v.* Whitney and Belmont Bridge Company (18 Howard, p. 432) the court says:

The purely internal streams of a State which are navigable belong to the riparian owners to the thread of the stream and, as such, they have the right to use the waters and bed beneath for their private emolument, subject only to the public right of navigation, and may construct wharves or dams or canals, etc., subject to this public easement. In respect to these purely internal streams of a State, the right of public navigation is exclusively under the control and regulation of the State legislature, and a structure, although it may be a real obstruction to navigation, if authorized by the legislature, it is lawful.

Chief Justice Taney, in delivering the opinion in the case of John Den *v.* Jersey Company, to be found in 15 Howard, 432, said:

It is not necessary to state particularly the charters and grounds under which they claim—

This was in New Jersey—

It is not necessary to state particularly the charters and grants under which they claim. They are all set out in the special verdict in the case of Martin *v.* Waddell, reported in 16 Peters, 367. The title claimed on behalf of the proprietors in that case was the same with the title upon which the plaintiff now relies. And upon very full argument and consideration in the case referred to, the court were of opinion that the soil under the public navigable waters of east New Jersey belonged to the State and not to the proprietors; and upon that ground gave judgment for the defendant. The decision in that case must govern this.

The counsel for the plaintiff, however, endeavor to distinguish the case before us from the former one, upon the ground that nothing but the right of fishery was decided in Martin *v.* Waddell, and not the right to the soil. But they would seem to have overlooked the circumstance that it was an action of ejectment for the land covered with water. It was not an action for disturbing the plaintiff in a right of fishery, but an action to recover possession of the soil itself. And in giving judgment for the defendant the court necessarily decided upon the title to the soil.

Mr. President, I want to spend a few moments, and only a few moments, on the question of forest reserves. I am not going into that question except as to the matter of title. I am not going to enter into a discussion whether the forest reserves are beneficial to the country or injurious, but I want to call attention to some decisions of the courts. In the case of United States *v.* Cornell (Mason's Cir. Ct. Repts., vol. 12, p. 63), it was held:

But although the United States may well purchase and hold lands for public purposes, within the territorial limits of a State, this does not of itself oust the jurisdiction or sovereignty of such State over the lands so purchased. It remains until the State has relinquished its authority over the land either expressly or by necessary implication.

Another important case in this connection is the case of the Fort Leavenworth Railroad Company *v.* Lowe (114 U. S., p. 525). I will make a brief statement in regard to that case.

Before there was an organized government in what is now the State of Kansas the Government of the United States took possession of a piece of ground for military purposes, now known as Fort Leavenworth, occupied it, and has occupied it ever since. I suppose the Government took possession of it seventy or seventy-five years ago. At all events, when the State of Kansas was admitted to the Union there was no reference made to Fort Leavenworth. The Government did not reserve anything. Kansas did not promise anything. Afterwards it was asserted that that property, being for the use of the Government of the United States, fell within the provision of the law that a State can not tax Government property. The question did not arise with reference to the fort and buildings, but arose with reference to the land of the railroad that crossed over the reservation, and the railroad company asserted the right to be independent of taxes. The matter came into the court. The court decided that Kansas had absolute jurisdiction of it. Mind you, this was a piece of land which the Government had appropriated years and years before Kansas was settled, and then Kansas was admitted without reference being made to the military reservation. The Supreme Court of the United States held that Kansas had jurisdiction; but subsequently Kansas was prevailed upon by the Government to cede its jurisdiction over that reservation. Until that time Kansas had absolute jurisdiction.

I do not propose to occupy the Senate much longer, although I have a great deal of manuscript here to which I intended to call attention. I do want to call attention, however, to one thing that I think is pertinent to be considered, particularly in connection with the pending case. I complained yesterday that I did not think the Government of the United States should allow any individual to control navigable waters; that I thought the United States was rich enough and strong enough when rivers were not navigable and it wanted to make them navigable to do so itself. I think in 1846 the Territory of Wisconsin was anxious to have the Fox River utilized for commerce. You will remember that was before railroads were common. It came to Congress, and Congress granted to the Territory, the title to be in the State when it became a State, a certain amount of land to build locks and dams that were necessary on Fox River. The State government, when it came into existence, promptly accepted the act:

The State accepted said grant of land for said purposes, and by an act of its legislature, approved August 8, 1848—

That was immediately after their admission—

undertook the improvement of said rivers, and enacted, among other things, that "Whenever a water power shall be created by reason of any dam erected or other improvements made on any of said rivers, such water power shall belong to the State, subject to the future action of the legislature.

They went on with that, and not finding themselves able to carry out the work, they finally incorporated a company called the Fox and Wisconsin Improvement Company. They went on and spent some money on it, and finally failed, just as other concerns have failed in doing these things, and then the Government found itself in a bad situation. The company could not go on, and they went into bankrupcty. Subsequently the Government bought them out, paid them off, and got rid of them. I believe we have had one other case of the same kind, where parties have gone out and got the permission from the Government, and they have not been able to comply, and the Government has had to buy them out. But I want to read a little thing here. This matter came to the Supreme Court of the United States in 1898. There was a question whether the canal company had any rights there or not, and the court said:

Upon the undisputed facts contained in the record we think it clear that the canal company is possessed of whatever rights to the use of this incidental water power that could be validly granted by the United States.

Now, it had a State concession and it had some kind of a concession from the General Government through the State. The litigation arose from the fact that one of the riparian owners claimed the right to some part of this water and undertook to interfere. This is another case, and it is cited by Judge Shiras:

The value of this water power created by the dam was much greater than that of the river in its unimproved state in the hands of the riparian proprietors, who had not the means to make it available. Those proprietors lost nothing that was useful to them except the technical right to have the water flow as it had been accustomed and the possibility of their being able some time to improve it. If the State could condemn this use of the water, with the other property of the riparian owner, it might raise a revenue from it sufficient to complete the work, which might otherwise fail. There was every reason why a water power thus created should belong to the public rather than to the riparian owners. Indeed, it seems to have been the practice, not only in New York, but in Ohio, in Wisconsin, and perhaps in other States, in authorizing the erection of dams for the purpose of navigation, or, rather, public improvement, to reserve the surplus of water thereby created to be leased to private parties under authority of the State.

I read that because I want to show that has been the rule, and there are several cases that I could cite from the State of New York as to the rights of the States. The States always control the water, or claim to control it, at least. I do not know that there has ever been a controversy between a State and the General Government as to who owned the water.

After stating this, the court says:

The learned judge then proceeds to cite decisions to that effect rendered in several of the State supreme courts.

I want to say here now that in a careful examination of the authorities, running over months, I have never found a case where the Government of the United States has asserted its right to waters that I assert belong to the State. Some of the executive officers and some of its subordinates may have

been confident that the Government of the United States could control the water absolutely, but no Federal or State court has so held.

I have one other matter I wish to call attention to of about the same general character. Mr. President, I have asserted, and I want to assert it now, that the United States has not any right to go into business. The United States can not legally go into a mercantile business, in my judgment. It can, of course, by its officials, if it sets up a store and puts somebody in it, do it until the question is raised in some proper manner. It can not go into the lumber business, but it is in the lumber business now.

It has in Colorado a large number of sawmills located on forest reserves. It is cutting timber for public use and selling it at very much higher prices than we were in the habit of paying, and where we have had one sawmill cutting timber we have in one single forest reserve six sawmills; and yet they tell us that the very purpose and object of the reserve is to protect the timber. They have traversed the mining region of my State and the building region and solicited parties to buy lumber of them. There is not a miner in some sections of the State who does not pay tribute to them. A hundred and some-odd thousand dollars was paid in Colorado last year. A miner can not go out in the forest and cut a stick to put in his mine but he must get the permission of some man or pay for it.

Mr. President, I am one of those who believe in the protection of forests, but I believe in their protection in a proper way, and I know there has been practically no waste of timber in the country in which I live. I was brought up in a timber country. I remember when more than half of western New York was covered with timber. I can remember when all of southern Pennsylvania was covered with timber—the finest timber in the world. There is not any left. I heard a Senator say one day we have wasted our timber; but I want to dissent from that. In the section in New York in which I lived until I was old enough to go West I saw the timber destroyed. I saw the farmer cut down the timber and roll it in a heap and burn it. Why did he do that? In order to make a place for a home. He wanted a place to build a house and make a farm. He could not do it in the woods, and he cut down the timber and burned it up; and I have seen fine timber burned up. It was followed by a flourishing farming community.

Mr. President, I am one of those who believe that civilization, a country settled by intelligent people, is a great deal better than a forest, however beautiful it may be, or however profitable it would have been if left. But seventy years ago and more, eighty years ago, the people cut up these trees and turned them into ashes that they might make a better condition, and they did make it. Would the State of New York have been better if that whole country had been kept in timber until to-day? It is possible that the owners of the land if they could have lived until this time would have made some money by selling the timber, but the community would not have been so well off.

I would rather see people living on land than to see timber on it, no matter how beautiful it is or how fine. We have destroyed some timber in Colorado, but we have added to the sum of human happiness by so doing. We have put into the commerce of the world a billion dollars of gold and silver, and we have made homes for thousands and thousands of men, and we have built up a civilization that can not be beaten in any part of the world. Suppose we have not so much timber; suppose there is a bare hill here and there. Mr. President, we have something better than timber to show for it. We have schools and colleges and churches and hospitals and all the appliances of civilization; and I can show you on that land where the timber has of course become scarcer, well-educated men and women—and when I say educated I mean those who have college diplomas—I can show you more men and women with that kind of an education than you can find in any New England city of the same size. I can show it not in one city alone, but in a dozen. I can show you that some good has come out of the destruction of the forests.

The superintendent of a street-car line in Denver said to me one day, "I have 200 college graduates running on my street-car line." You can not find that anywhere else in the world. Why do we have them? Because we have made a settlement there that is desirable for the people and we have a climate which is health giving, which makes it desirable for those who have fallen into ill health to come there and live.

We have economized and utilized our advantages, such advantages as we have had. We have had some trouble. I went there when the Indian was rife. I went there when every pound of freight that was brought in paid 25 cents a pound. Whether it was machinery for our mills or woolen goods that the women wore, it cost at least 25 cents a pound to land it in Denver. Why should we not use the timber?

I heard a prosecution once there for cutting timber on the public lands. The judge, sitting at his desk, said: "I mean to dismiss this case. The desk at which I am sitting, the church next door have been built out of timber cut on the public land. Congress said to us: 'This is a country open for settlement,' and we came here. Have we not a right to make ourselves comfortable? Can we carry on civilization here unless we have the opportunity to do that?" To-day they will tell you we have blasted the hills because we have cut off the pine. If we have cut off the pine, we have made a hundred orchards where we have made a bare hill.

Mr. President, this question to us is a live one. Are the State of Colorado and the State of Idaho and other States to be refused the opportunity of filling up with settlers? One-fifth of the State of Colorado is in a forest reserve; more than that in the State of Idaho. We passed a law that would open up every acre of that to the prospector. The Department has put on such rules and regulations that a prospector dare not go into a forest reserve. We passed a law that a homesteader could go into a reserve if he saw fit. They have passed such regulations that no homesteader can go in. If he does at the bidding of some cheap Jack, he will be told, "You can not make a living here. Get out." In my State I can show not simply a notice to quit, but cite cases where they have absolutely moved him off the homestead, which he could hold according to law.

Mr. FLINT. May I interrupt the Senator from Colorado?

Mr. TELLER. You may.

Mr. FLINT. I want to ask the Senator what is his authority for making the statement that a homesteader can go into a forest reserve?

Mr. TELLER. We have a law.

Mr. FLINT. What law?

Mr. TELLER. A statute.

Mr. FLINT. I do not understand——

Mr. TELLER. Yes; there is a statute.

Mr. FLINT. I do not understand that a homesteader can go into a forest reserve.

Mr. TELLER. He can under the statute, but it is absolutely ignored by the Department.

Mr. FLINT. The only statute which permits a person to enter a forest reserve——

Mr. TELLER. If the Senator from California does not know he can find out by looking at the statute. There is a law of the United States which allows a man to go into a forest reserve and make a homestead.

Mr. FLINT. Without the land being set apart as agricultural land by the Forester?

Mr. TELLER. There is nothing said about that.

Mr. FLINT. I should like to have the Senator refer to the statute.

Mr. TELLER. It was intended by Congress that a man should determine for himself whether he could make a living on the land. He should not have to ask a subordinate of the Government. Now, under the regulations, he must first get consent before he can get in, and then if the officials do not think it is all right they can put him out.

Mr. FLINT. I am trying to get the Senator to refer me to the statute. The only statute——

Mr. TELLER. I do not think there is such a law.

Mr. FLINT. I think I had something to do with drawing the law.

Mr. TELLER. Then you ought to know what it is.

Mr. FLINT. As I understand the law, no land within a forest reserve is subject to homestead entry unless after an investigation by the Secretary of Agriculture he determines that the land is more valuable for agriculture than it is for forestry.

Mr. TELLER. That was not in the original law.

Mr. CLARK of Wyoming. Mr. President——

The VICE-PRESIDENT. Does the Senator from Colorado yield to the Senator from Wyoming?

Mr. TELLER. Certainly.

Mr. CLARK of Wyoming. I wish to ask the Senator from Colorado whether it is not a fact that, notwithstanding the statute which he has mentioned, as well as the statute mentioned by the Senator from California [Mr. FLINT], each one of these proclamations for a forest reserve ends with warning all people not to make settlement within the reserve?

Mr. TELLER. In all the forest reserves you will find a card saying "Keep out of here; this is Government property." And that was so soon after the law passed it was ignored by the Department at once.

I want to say another thing about which we in the West complain. I did not intend to touch upon it at all, but I will. In 1873, for the first time, Congress provided for the appropriation of coal lands. Up to that time there never had been any difference between coal land and agricultural land, so far as the Government was concerned. In 1873 Congress provided that all land that was coal land should be selected and certified by the public officials as coal land, and then that nobody could take any of that land without paying not less than $10 an acre if it was within a certain distance of a railroad and not less than $20 an acre if it was nearer. We supposed that that meant $10 an acre. We knew that way back, years ago, there was a statute which provided that the public lands should be sold for not less than $1.25 an acre, and they had always been sold for $1.25, except as sometimes changed, for instance, when land grants were made, and so forth.

The Executive Department within the last two years has determined that that gave them the power to determine that they could ask just as much more for the coal lands as they wanted, and they have raised the price in my State from $10 an acre, in that district where under the law it should be $10, to $25, and where it should be $20 they have raised it to $50. Does anybody suppose that Congress ever intended to pass a law disposing of the public lands and leaving it to the Executive Department to say the lands should not be sold for less than $50 an acre? Why could they not just as well say a hundred dollars?

What we complain of in the West more than anything else, in connection with forest reserves, are these unfair things that are being done—bad administration of the law. We know, whether the Department does or not, that we are entitled to have the settlers come there and make a home, and we know that they are retarding the settlement and hindering the growth of these great Western States without advantage to anyone.

Mr. President, before I forget it I wish to call attention to a suggestion I nearly forgot. This is leaving the matter that we are speaking of.

When we were providing for the settlement of the great Northwest Territory in 1787 and 1788 and so on we made some provisions, and this is one which will be found in the First Statutes at Large, page 468:

And be it further enacted, That all navigable rivers within the territory to be disposed of by virtue of this act—

That meant all the five States—Ohio, Indiana, Illinois, Minnesota, and Wisconsin—

SEC. 9. *And be it further enacted,* That all navigable rivers within the territory to be disposed of by virtue of this act shall be deemed to be and remain public highways, and that in all cases where the opposite banks of any stream not navigable shall belong to different persons the stream and the bed thereof shall become common to both.

Then again, later, they reiterated that, particularly as to Indiana, as to which the statement was made:

And be it further enacted, That all navigable rivers, creeks, and waters within the Indiana Territory shall be deemed to be and remain public highways.

I want to call attention to that. It has been the policy of this Government to keep the streams open wherever they were navigable and not attempt to control them where they were nonnavigable.

I have detained the Senate too long, and I have not said all I intended to say. I shall take up this matter again some day and add some things that I would have said to-day if time would permit, even at the risk of imposing on the patience of the Senate.

[Remarks of Mr. Justice Harlan at the banquet given in his honor by "The Kentuckians," in New York, on December 23, 1907, at the Hotel New Plaza.]

TOAST: "KENTUCKY: UNITED, WE STAND; DIVIDED, WE FALL."

Mr. President, fellow-Kentuckians, and guests, I count myself most happy to be surrounded on the present occasion by so many representative men of my native State. Every true man has a peculiar affection for the State in which he first saw the light of day and for the people among whom he passed his early life. But it has seemed to me—indeed, the fact has been often commented upon by others—that there is an unusual feeling of brotherhood among Kentuckians. I am far enough advanced in years, fellow-Kentuckians, to have known personally even the grandfathers of many members of this club. At a memorable period in the country's history I stood with the fathers of some of you under the flag of the Union, while the fathers of others of your number rallied under another flag—each man, whether under the one flag or the other, resolutely contending for what in his conscience he deemed to be right. But I rejoice to say that we who then were opposed are no longer estranged, but with hands clasped in friendship stand together under the same flag, now recognized throughout the world as the emblem of the great Republic. We may differ about political questions, but, apart from such differences, when Kentuckians meet, whether in their own country or in foreign lands, they warm toward each other because they are fellow-Kentuckians.

We are, however, something far more than Kentuckians. We are Americans. Trite as that phrase may sound, the older I grow the more priceless to me is the fact it expresses. We may well be proud of the State that gave birth to Abraham Lincoln, that sent Henry Clay and John J. Crittenden to the Senate, and nurtured such men as Zachary Taylor, Isaac Shelby, George Nicholas, the Breckenridges, the Marshalls, John Boyle, George Robertson, Samuel F. Miller, Joseph R. Underwood, Charles S. Morehead, James Guthrie, John L. Helm, Madison C. Johnson, Lazarus W. Powell, Archibald Dixon, Joshua F. Bell, Richard H. Menefee, and many others distinguished in every walk of life and too numerous to be mentioned on this occasion. But what would it mean to us to be Kentuckians if we were not also, or rather first of all, Americans, whose allegiance to the nation in matters of general concern is above allegiance to any State, just as the Constitution of the United States, with respect to all national objects, is above the constitution of any State.

The toast assigned to me suggests, Mr. President, many interesting thoughts about the early days of our Commonwealth and its relations to the National Government. Going back for a moment to the beginnings of Kentucky's history, we recall the interesting fact that very shortly after the close of the war for independence and after the acceptance of the Constitution by the requisite number of States a scheme was devised by foreign conspirators and domestic malcontents to detach the people of Kentucky from all connection with the original States, and thus make the Alleghenies the southwestern limit of the United States. This scheme found no favor with the indomitable pioneers who, surrounded by hostile Indian tribes in the wilds of an unsettled country, established a government with a constitution modeled after the Federal Constitution and more than a century ago applied to Congress for the admission of Kentucky into the Union as a State. Thus our fathers, resisting all appeals made to them to establish an independent State in the West, placed themselves by the side of their brethren of the older States, and caused to be inscribed upon Kentucky's coat of arms the suggestive and memorable words, "United, we stand; divided, we fall." There comes to my mind, Mr. President, a personal letter of the great Chief Justice, in which his use of that motto was so striking that it is peculiarly appropriate upon this occasion to quote his words. He said: "I am disposed to ascribe my devotion to the Union, and to a government competent to its preservation, at least as much to casual circumstances as to judgment. I had grown up at a time * * * when the maxim, 'United, we stand; divided, we fall,' was the maxim of every orthodox American, and I had imbibed these sentiments so thoroughly that they constituted a part of my being. I carried them with me into the Army, where I found myself associated with brave men from different States who were risking life and everything valuable in a common cause believed by all to be most precious, * * * and where I was confirmed in the habit of considering America as my country and Congress as my government." The habit of considering America as his country was the keynote of the life and work of the incomparable jurist whose profound and lucid judgments on behalf of the court of which he was the head built the broad highway upon which the nation has advanced to its present position of power and strength and unity.

There are some, Mr. President, who think they see dark clouds upon the horizon of our future, and express grave apprehension as to the stability of the Government ordained by the people of the United States and established by the Constitution. In a population of 90,000,000 of people we must expect to find some who indulge in gloomy forebodings as to the future of the country, and who seem to cultivate the habit of predicting disaster. Such persons are quite unhappy when the facts do not justify them in believing that everything is going wrong. But there is no occasion for alarm. The American people, knowing that eternal vigilance is the price of liberty, will take care that no harm comes to the country. At all times since the organization of the Government they have shown themselves equal to every emergency, however sudden or startling, which involved the safety of our institutions. They may seem at times to tolerate false, visionary, and mischievous views, but in the end they will surely recognize the dangers of the situation, whatever they may be, and will do what prudence and patriotism require at their hands. Their final, deliberate judgment upon public questions is quite certain to be the best for all concerned.

What, let me ask, are some of the grounds upon which the pessimist of these days bases his fears for the safety of our institutions? He persuades himself to believe that the trend in public affairs is toward the centralization of all governmental power in the nation and the destruction of the rights of the States. If this were really the case, the duty of every American would be to resist such a tendency by every means in his power. A National Government for national affairs and State governments for State affairs is the foundation rock upon which our institutions rest. Any serious departure from that principle would bring disaster upon the American system of free government.

But the fact is not as the pessimist alleges it to be. The American people are more determined than at any time in their history to maintain both national and States rights, as those rights exist under the Union ordained by the Constitution. I say the people of the United States, for although the Constitution was accepted by the separate action of the people in their respective States, they moved together, in a collective capacity, as one people, in creating a nation for certain specified objects of general concern. They will not patiently consider any suggestion or scheme that involves a Union upon any other basis. They will maintain, at whatever cost and in all their integrity, both national and States rights.

The best friends of States rights, permit me to say, are not those who habitually denounce as illegal everything done by the General Government, but those who recognize the Government of the Union as possessing all the powers granted to it in the Constitution, either expressly or by necessary implication; for, without a General Government possession controlling power in relation to matters of national concern, the States would have no prestige before the world and would be in perpetual conflict with one another. With equal truth it may be said that the best friends of the Union are those who hold that the States possess all governmental powers not granted to the General Government and that are not inconsistent with their own constitutions or with the Constitution of the United States, or with a republican form of government. The people of the United States cherish, and will compel adherence to, the fundamental doctrine that the States are vital parts of the American system of government; and they will insist with no less determination upon the recognition of the just powers of the States—to be exerted always in subordination to the supreme law of the land—as essential to the preservation of our liberties. The Supreme Court of the United States has again and again declared, upon full consideration, that a close and firm Union is necessary for the happiness of the American people, and that "without the States in union there could be no such political body as the United States."

If, then, the matchless Government devised by the fathers and ordained by the people of the United States is to be preserved and handed down intact to posterity, national power and State power must go hand

in hand in harmony with the Constitution. If those powers clash, the paramount authority of the Union within its prescribed sphere of action must prevail. Such is the express mandate of the Constitution, and such our common sense and experience tell us must always be the case, if liberty, regulated by law, is not to perish from our land. The nation being supreme within the sphere of its action as defined by the Constitution, its authority, when legally exerted, binds every State as well as all individuals within the territory of the United States. The glory of the Republic is that its affairs are regulated by a written Constitution—the fundamental law which distributes the powers of government among three separate, coequal, and coordinate departments, each exerting the authority, and only the authority, conferred upon it—and which Constitution, until amended in the mode prescribed by itself, must be deemed supreme over the Congress, over the President, over the courts, over the States, and over the people themselves.

The pessimist is misled by the declaration of some, happily few in number, who hold that, whatever the words of the Constitution, that instrument should be so construed as to make it mean what a majority of the people think, at a given time, it should mean. He is also misled by the theory advanced by those who hold that Congress must be permitted to exert any governmental power whatsoever, not expressly denied to it, if that body deems that its exercise will promote "the general welfare." But such theories of constitutional construction find no support in judicial decisions or in sound reason, least of all in the final judgments of that tribunal whose greatest function it is to declare the meaning and scope of the fundamental law. The National Government, it should ever be remembered, is one of limited, delegated powers, and is not a pure democracy, in which the will of a popular majority as expressed at the polls at a particular time becomes immediately the supreme law. It is a representative Republic, in which the will of the people is to be ascertained in a prescribed mode, and carried into effect only by appointed agents designated by the people themselves, in the manner indicated by law. It would be a calamity unspeakable if our institutions and the sacred rights of life, liberty, and property should be put at the mercy of a majority unrestrained by a written supreme law binding every department of government, even the people themselves. The pessimist—indeed all—may take courage in the fact that it has become a recognized rule of construction that the Constitution is to be taken as meaning what its words in their natural, obvious sense import, and, if the people desire it to mean something different, that instrument must be amended in the manner, and only in the manner, prescribed by itself. The dispute among statesmen has not been so much in reference to the general principles that should govern constitutional construction as to the application of those principles in determining the extent of the powers granted to the National Government. Early in the history of the nation some insisted upon a narrow, literal interpretation of the Constitution which, had it been approved, would have made the General Government a rope of sand, wholly inadequate to the great purposes for which it was established. But long ago that view was rejected by the Supreme Court of the United States, and its rejection has been universally approved.

There are some who would deny to Congress all powers that are not, in words, specified in the Constitution as belonging to the legislative branch of the Government. They would eliminate altogether from our jurisprudence the long-established doctrine that Congress may exercise powers that are plainly incidental to those expressly granted and not prohibited by the Constitution—that is, powers necessarily implied because embraced by those enumerated, and without which the Government would be unequal to the objects for which it was avowedly established and would become, to use the words of Marshall, "a splendid bauble." If the views of the latter class of constitutional critics should gain the approval of the American people, the country would be carried back to that period of its history when distinguished politicians gravely argued that the Supreme Court of the United States could not, without violating the Constitution, review the action of a State court which, by its final judgment, denied or destroyed rights plainly secured to the citizen by the supreme law of the land. Such critics are politically of kin to those who affirm that the courts may not declare a legislative enactment void, even when it is in plain violation of the Constitution.

It is true that national power, as now exerted, covers a wider field of action than it did in the early days of the Republic, but that does not prove, as the pessimist would have us think, that the Government has usurped powers that do not belong to it and has entered the domain reserved by and for the States. It proves only that the nation has from time to time, as the public interests demanded, brought into active operation powers which Congress had not previously chosen to exert. So vast has been the increase in our population and so diversified and extended have become our industrial interests, that occasions must necessarily arise from time to time for a more intimate connection between the Government of the Union and the commercial and other affairs of the people than perhaps the fathers ever dreamed of. Hence, if modern problems, as connected with the operations of government, are to be solved in the interest and for the benefit of the people, and if the nation is to keep abreast with advancing civilization, new fields of legislation must be occupied. While new legislation must always be closely scrutinized and care be taken that it is not inconsistent with the Constitution, we must not be so unwise or suspicious or timid as to reject a new policy or a new law simply because it is new or simply because it may cover areas not consciously within the mental vision or the thoughts of the framers of the Constitution. That wonderful instrument, the Supreme Court has said, was intended "to be adapted to the various crises of human affairs."

The wise men of the constitutional period deemed it unnecessary to go further than to specify the general objects to be accomplished by the National Government and to enumerate the powers that may be exerted by it, leaving to Congress—under its responsibility to the people and under its authority to pass such laws as were necessary and proper to carry into effect the powers enumerated and granted—to employ such means not expressly or impliedly prohibited as are appropriate to the particular object designed to be accomplished. The supreme judicial tribunal of the nation has spoken with distinctness upon this point. Its words, in a great case—all its members concurring—are: "The Constitution unavoidably dealt in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers or to declare the means by which those powers should be carried into execution. It was foreseen that this would be a perilous and difficult if not an impracticable task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter; and restrictions and specifications which at the present might seem salutary might in the end prove the overthrow of the system itself. Hence its powers are expressed in general terms, leaving to the Legislature, from time to time, to adopt its own means to effectuate legitimate objects and to mold and model the exercise of its powers as its own wisdom and the public interests should require." Thus, Mr. President, was the nation armed with authority to meet new conditions that might arise and which permitted or required governmental action. Is a proposed new law embraced by any general power granted? Has it any reasonable connection with the specified objects, or any of them, to which, under the Constitution, the power of the nation extends? If these questions be answered in the affirmative, then it will only remain for the lawmaking department of the Government to determine whether the proposed law will be conducive to the public welfare. And that determination will not be one of law, but simply one of policy. Granted the power to legislate in reference to a particular matter, Congress can employ any means, not forbidden nor inconsistent with the Constitution, that may be germane to the end proposed to be accomplished.

Therefore let the country gather up all the strength that comes from the patriotism and loyalty of the American people and go forward in its marvelous career, holding to the confident belief, justified by the words of the Constitution and by judicial decisions, that the checks in our governmental system will suffice in the future, as they have sufficed in the past, to guard our institutions against insidious attacks upon the fundamental principles of free government or against the exercise of arbitrary or usurped power. Keeping within the scope and broad lines of the Constitution, we may walk safely and without fear. We need not hesitate to build on the foundations laid by the forefathers. Those foundations are broad and deep, and so long as new measures and policies are tested by the plumb line of the Constitution and we keep well within its wise limitations, we may safely rear whatever superstructure our welfare and greatness as a nation may require.

Let us, then, move on in the "old paths, where is the good way" marked out by the fathers. Let us not give our approval to any interpretation of the Constitution that will either cripple the nation's authority or prostrate the nation at the feet of the States, or that will deprive the States of their just powers. Let us hold fast to the broad and liberal, and yet safe, rules of constitutional construction approved by the fathers and established by judicial decisions. In so doing we will sustain our dual system, under which the Government of the Union is forbidden to exercise any power not granted to it expressly or by necessary implication, while the States will not be hindered or fettered in the exercise of powers that have not been surrendered by them to the Union and are not inconsistent with the Constitution.

Mr. President, I owe an apology for saying this much. There are other speakers to follow, whom I know you are eager to hear. But I can not take my seat without thanking the Kentuckians now residing in this imperial city for the high honor they have done me on the occasion of this magnificent banquet. The memory of your cordial greeting will abide with me to my life's end and will be a sweet heritage for my children. During all the years of a life now quite extended—much of which has been passed in the nation's service, away from my native State—there has never been a moment when I did not have an abiding affection for the great-hearted, high-minded, chivalrous people of my Kentucky home, which has been the home of my people since the days before the Revolution. Our old Commonwealth, Mr. President, is indeed a goodly land, "a land of brooks of water, of fountains and depths that spring out of valleys and hills," a land wherein "thou shalt eat bread without scarceness" and "shalt not lack anything in it." And yet, well-nigh inexhaustible as are its natural resources, Kentucky's richest possession is in its people. The brave men who first settled the State and made its Constitution and laws and guided its affairs during the formative years of its earlier history were worthy scions of a sturdy stock. They were great lovers of liberty and were devoted to the Union. And many of their sons in other States have shed honor upon this Commonwealth and upon the country.

In closing, Mr. President, I must again express my deep satisfaction in the thought that upon all questions affecting the existence of the Union the Kentuckians of 1907 are as thoroughly united as were their fathers when, in 1792, our Commonwealth became, to use the words of Congress, "a new and entire member of the United States of America." Her people, we are glad to know, have outgrown the feelings of distrust and animosity that divided them in the perilous times of 1861, and their faces are now turned steadily and hopefully to the future, determined that Kentucky shall play her full part in the building up of our beloved country in all that makes for true national greatness.

And if, to-night, it were possible for me to send a message to the young men of my native State—of whatever political parties they are members—it would be this: Forget the things that are behind save only the noble deeds of the mighty dead who gave Kentucky its large place in the early history of the nation. Quench whatever remains, in both parties, of the baleful fires of narrow partisanship and mere faction. Crush the monster of lawlessness in whatever way its evil deeds are manifested. Maintain the rights of all. While remaining loyal to whatever may be your various political affiliations, strive after large, generous, and broad policies and lift the State steadily toward higher levels. Work shoulder to shoulder in the effort to build up our grand old Commonwealth in all things that will contribute to its moral, intellectual, and material welfare. Thus you will help most effectively in giving Kentucky a worthy place among those States that shall lead the nation in its noble mission of commending to the world the priceless blessings of institutions that rest upon the consent of the governed and recognize the inherent rights of man as man.

EXECUTIVE SESSION.

Mr. KEAN. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After ten minutes spent in executive session the doors were reopened.

ACCOUNTS OF WILLIAM R. LITTLE.

Mr. STONE. Mr. President, some time since the bill (S. 819) authorizing the Secretary of the Interior to examine and adjust the accounts of William R. Little, or his heirs, with the Sac and Fox Indians was passed by the Senate. The day following the senior Senator from Nebraska [Mr. BURKETT] moved to recon-

sider the vote by which the bill was passed. I desire now to make the point that as the Senator from Nebraska did not vote for the passage of the bill he was not competent to make the motion.

The VICE-PRESIDENT. The Chair understands that there was no yea-and-nay vote taken upon the passage of the bill.

Mr. STONE. There was not.

The VICE-PRESIDENT. The Chair understands that in the absence of such a vote a Senator, in making a motion to reconsider, is presumed to be within the rules. The Chair therefore overrules the point of order.

Mr. STONE. Then I suppose a motion to lay the motion to reconsider on the table will be in order.

The VICE-PRESIDENT. It will be in order.

Mr. STONE. I make that motion.

The VICE-PRESIDENT. The Senator from Missouri moves to lay the motion to reconsider on the table.

The motion was agreed to.

The VICE-PRESIDENT. The bill stands passed.

SNAKE RIVER DAM, WASHINGTON.

Mr. PILES. I should like to proceed with the consideration of House bill 7618.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 7618) to authorize the Benton Water Company, its successors or assigns, to construct a dam across the Snake River, in the State of Washington.

Mr. HEYBURN. I move that the bill be referred back to the Committee on Commerce, from which it was reported.

The VICE-PRESIDENT. The Senator from Idaho moves to recommit the bill to the Committee on Commerce.

Mr. HEYBURN. I ask for the yeas and nays on the motion.

The yeas and nays were not ordered.

Mr. PILES. I should like to ask the Senator from Idaho what object he has?

The VICE-PRESIDENT. The question is on agreeing to the motion of the Senator from Idaho.

Mr. HEYBURN. I suggest the absence of a quorum.

The VICE-PRESIDENT. The Senator from Idaho suggests the absence of a quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ankeny	Clay	Gary	Scott
Bacon	Crane	Heyburn	Simmons
Bankhead	Culberson	Hopkins	Stephenson
Borah	Cullom	Kean	Stewart
Brandegee	Curtis	Knox	Stone
Briggs	Dick	Lodge	Sutherland
Brown	Dillingham	McCreary	Taliaferro
Bulkeley	Dolliver	McEnery	Teller
Burkett	du Pont	Nelson	Warner
Burnham	Elkins	Nixon	Warren
Burrows	Flint	Overman	Wetmore
Carter	Foraker	Perkins	
Clapp	Foster	Piles	
Clark, Wyo.	Frye	Richardson	

The VICE-PRESIDENT. Fifty-three Senators have answered to their names. A quorum of the Senate is present. The Senator from Idaho moves that the pending bill be recommitted to the Committee on Commerce.

Mr. HEYBURN. Is it in order to state the reason for the motion?

The VICE-PRESIDENT. It is in order.

Mr. HEYBURN. Mr. President, if I can have the attention of the members of the Senate I know that I can give a good reason for the position which I have taken in regard to this bill. I know that I can not reach them unless they are present, and it was for that reason that I asked their presence on this occasion. It is one of more than passing importance.

The Government of the United States is asked to enter upon a new departure and to do something that it has not done before. It is asked to permit private individuals to place a dam in a navigable river. If any Senator here can point to an instance where the Government or Congress has taken action of that kind heretofore I would be glad to have my attention called to it.

Mr. DOLLIVER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Iowa?

Mr. HEYBURN. With pleasure.

Mr. DOLLIVER. At the last session of Congress authority was given to a private corporation to put a dam across the Mississippi River at Keokuk, which they are now engaged in building, the act reserving to the Government the right to furnish specifications for a lock around the dam to facilitate navigation.

Mr. HEYBURN. Was that the act of June 21, 1906?

Mr. DOLLIVER. I presume it was.

Mr. HEYBURN. At that time Congress started out to do a wrong. The wrong has not yet been consummated, and I am here to call attention to the fact in time to prevent this class of bad legislation. I have in my hand a copy of the act of June 21, 1906, by which Congress in an hour of forgetfulness undertook to delegate its powers to the administrative branch of the Government in order that we might be saved some trouble and time in considering measures in this body and another.

Mr. President, I am not advised so as to be able to say what actuated or moved the committee in reporting this bill.

Mr. NELSON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Minnesota?

Mr. HEYBURN. Certainly.

Mr. NELSON. I can not speak for the committee by authority. I will only say to the Senator from Idaho that I have been a member of the Committee on Commerce ever since I became a member of this body, and we have during that time at every session of Congress reported numerous bills for the construction of dams, and they have been passed. I have had at least a dozen bills of that kind passed, and they have become laws, in reference to the upper Mississippi River; and I think the Senators on the other side of the Chamber will bear witness to the fact that at nearly every session of Congress we have passed bills for the construction of dams across navigable rivers in the Southern States. It is a common thing, and I have never heard the contention made against any of those bills that has been made against this measure.

Mr. HEYBURN. Mr. President, I have given some attention to the class of legislation that Congress has indulged in upon this question, and if there has been any bill passed by Congress authorizing the construction of a dam in a navigable river, such as is proposed by the pending bill, my attention has not been called to it.

Mr. PILES. Mr. President, I should like to say for the benefit of the Senator that the pending bill is in the exact form of all other bills passed on this subject. Practically every such bill I have ever reported out of the committee has been in this form.

Mr. HEYBURN. The form or language of the bill is not the question; I am speaking of the purposes and the circumstances represented by the bill. It is right and proper under some circumstances for the Government to either build dams in rivers or to permit it to be done under proper regulations by the Government. There is nothing in the pending bill that brings it within the class of bills to which the Senators have referred.

Yesterday, in discussing this question, I presented to the Senate, in a measure, the facts with reference to the proposed construction of this dam. I read, and it is in the RECORD, the articles of incorporation, stating the purposes for which the dam is proposed to be constructed. I read a statement of the financial condition of this corporation and the purposes for which the corporation was formed, advising the Senate of the scope and the power and the effect of this legislation.

I say again that unless I have overlooked some legislation Congress has not passed any act authorizing the construction of a dam in any navigable river for the purposes and under the conditions that surround this proposed legislation; and it will be a day of danger to the navigation of rivers and to the people and the establishment of a bad principle when Congress does take such action.

The Snake River is a great river, rising up in the Yellowstone Park and flowing down through the State of Idaho and through the State of Washington and through the State of Oregon into the Pacific Ocean. It is one of the most magnificent rivers on the American continent. Lewiston is at the head of navigation upon the river. It is on the extreme western boundary line of the State of Idaho. It has been the boast of the State of Idaho that it was a seaboard State by virtue of the fact of navigation upon the river from Lewiston to the sea.

Now it is proposed to allow this private enterprise, with $25,000 capital behind it, to come in here and obtain the consent of Congress that it may enter upon the construction of a dam for the purpose of making power to sell and creating water for the irrigation of land that they do not own, but hope to own.

Mr. KNOX. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Pennsylvania?

Mr. HEYBURN. Certainly.

Mr. KNOX. I wish to ask a question. I want to know if it is proposed to construct this dam between Lewiston and the sea?

Mr. HEYBURN. Yes. Now, it will make no difference to me or to the people of Idaho whether the dam is consiructed

down at the mouth of the river, at Astoria, or farther up, at the mouth of the Willamette, or at any other intermediate point. It would be as detrimental to the State of Idaho were it constructed anywhere below the head of navigation.

The river has been navigated since 1861. The boat that plied upon the river was named *Idaho* before the Territory was named Idaho. The first seal of the Territory of Idaho bears upon it the impress of the steamboat coming up the Snake River to Lewiston, which was then the first settlement within what is now Idaho. With all the romance which has been thrown around the name of Idaho, the fact is that it took its name from the steamboat and the steamboat brought the name there from Colorado. Idaho Springs in Colorado were named before Idaho Territory; and the name in Indian is one of exclamation, as at the sunrise, Idaho! That is the name, and Idaho stands there at the head of the navigation of the Snake River, demanding that she shall have always an open river to the sea.

Mr. PILES. I should like to ask the Senator a question.

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Washington?

Mr. HEYBURN. Certainly.

Mr. PILES. I should like to ask the Senator from Idaho what people in Idaho demand that the dam shall not be constructed. I have here a report in writing from the engineer, whom the Senator from Idaho knows to be a man of ability and character, and whom the board of trade of the city of Lewiston, the largest city in Idaho, located on the Snake River, employed to go and examine the question of the construction of the dam. This man came back and reported to the board of trade of the city of Lewiston that the construction of the dam would be a benefit to the city of Lewiston, and that it would be a benefit to the navigation of the river. Thereupon the board of trade of the city of Lewiston, situated upon the banks of the Snake River, approved the dam and asked me to get the bill through. Those are the facts.

Mr. HEYBURN. Mr. President, every member of this body knows something of the method and of the force and effect of petitions and telegrams in support of or against a measure. If all the names the Senator has from the State of Idaho in favor of his bill were here on the desk, they could be written on the palm of my hand.

Mr. PILES. Mr. President——

Mr. HEYBURN. If the Senator will pardon me, I have had petitions and telegrams and letters both ways. Captain Gray, one of the oldest citizens of Lewiston, and a man who has navigated that river since 1862 or 1863 at intervals (he was away for a few years) is interested in this enterprise, and he writes me a personal letter asking me to waive my objections to it on the part of the State of Idaho and to give it my support. He tells me of what great advantage it would be to the local community in which they hope to irrigate certain lands and build up the town of Pasco and the surrounding country. I would do almost anything for Captain Gray that I would for any man. He is and for a long time has been my personal friend. I went down this river with him. I navigated it from Lewiston to Celilo Falls, where this Government is expending about $9,000,000 for the purpose of keeping this river open to the sea, and when we went down his heart was aflame with joy, because he found the old river just as it had been when he had navigated it twenty-five years before that time.

Mr. PILES. I should like to ask the Senator——

Mr. HEYBURN. And his boast was, in the speech which he made, that it meant an open river from Lewiston to the sea as soon as the Celilo Falls Canal was finished; and that ought to be finished this coming year. We have a continuous appropriation for it.

Mr. PILES. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Washington?

Mr. HEYBURN. I do.

Mr. PILES. I will ask the Senator from Idaho if Captain Gray, who is one of the oldest navigators in that country, does not point out five different ways in which this would benefit the navigation of the Snake River?

Mr. HEYBURN. Mr. President, Captain Gray, who, as I say, is a splendid navigator, a good man and a good citizen, and whose intentions are of the best, can not see quite as far as some men can into the effect of enacting a law which establishes the right of a private corporation to build a dam or to undertake or enter upon the building of a dam, and to distinguish between the benefits that would come from such a dam existing there, whether built by the Government or by private enterprise. He does not realize that this corporation, which is proposing to build it and which is here asking our consent that they may do so, is one of those temporary corporations limited by the terms of its charter in years, and limited in capital, that would have to undertake the permanent control after it had constructed its dam, which will cost, in my judgment, not less than $2,000,000 to construct.

After they have constructed it they will have to maintain it—not for ten years, not for twenty years, not for fifty years, but forever. We are legislating here for the rights not only of the people who have signed telegrams and petitions to the Senator from the State of Washington, but we are legislating here for the people who will come after them and who will want an open river from Lewiston to the sea.

We heard nothing of this agitation until the railroad paralleled the river. The railroad does not want an open river to the sea, because there is a railroad from Lewiston to the sea upon the banks of this river. Now, they have to compete in the traffic that goes from that country to-day to the markets of the world with these steamboats, and as was stated yesterday by the Senator from Colorado, one of those boats that carry down the river in a single season several hundred thousand tons of wheat. We produce within the drainage of the water that is behind this navigation, which is proposed to be interfered with, more than 30,000,000 bushels of wheat; we send a very large proportion of that wheat to foreign markets, and it goes upon vessels now at the city of Portland. It is there loaded for foreign shipment.

Mr. PILES. Now, I should like to ask the Senator, if he will permit me——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Washington?

Mr. HEYBURN. Yes.

Mr. PILES. I should like to ask the Senator from Idaho if both sides of the Snake River are not paralleled by railroads, and have not been so paralleled for years? They were the earliest roads in that country. I should like to ask the Senator if he does not think the engineer employed by the city of Lewiston and the business men of Lewiston, who want an open river to the sea, are just as capable, after a personal examination of this project—which, by the way, is 300 miles from the State of Idaho and wholly within the State of Washington, in the county of my colleague [Mr. ANKENY] and about 5 miles above the mouth of this river—I ask if he does not think that those people, who are looking out for an open river for Idaho and for the city of Lewiston, situated on this river, are not just as well capable of judging of the navigability and of the improvement of the navigability of that river by this dam as he himself is?

These men made a personal examination of the river. The business men, who are interested in maintaining their great jobbing houses in Lewiston and having an open river to the sea, did at first oppose this bill, but after they investigated, by their engineer and by the man who was familiar with navigation on that stream, they withdrew their objection and asked the Senator from Idaho himself to support the bill, and they have asked his colleague to support it. So far as I am concerned I have not found a man in Idaho who does oppose this bill.

I would like to ask the Senator's attention to the fact, as I have said, that this is purely a Washington project, located 300 miles from Idaho in the State of Washington, for development by Washington people, to reclaim from one hundred to one hundred and fifty thousand acres of arid land of the State of Washington in order to furnish homes to the people of that State.

I submit, Mr. President, that if I should oppose the construction of a dam on the Columbia River down in the State of Oregon, although that river flows through the State of Washington, I would not feel that I was doing justice to the people of the State of Oregon, particularly if the Government engineer had stated that it would improve the navigation of the river.

As I read to the Senate yesterday, the Chief Engineer of this Government, by a written report and a written letter to me, stated that the reason he approved of the passage of this bill in the House of Representatives was because the construction of this dam, as asked for by these people, would improve the navigation of that river. One engineer reports here that it would save the Government a half million dollars if these people put this dam in the river, set back that water from 18 to 20 miles over these dangerous shoals, and put in at their own expense a canal around these dangerous shoals. I doubt if the Senator can find anybody in his State who opposes this bill, except himself, or anybody in that section of the country who does not feel that it will be a benefit to this river and a benefit to the people of Oregon and of Washington and of Idaho.

Even the Board of Trade of the city of Portland has, I am informed, approved and indorsed this plan. The Board of Trade of the city of Wallula, in the county in which this project is being constructed, wherein my collague resides, approved this bill, and every town in all that section of country bordering upon this river has declared its approval of this project. It is a plain, simple proposition like hundreds that have passed through this Senate. Why the Senator from Idaho should call for an executive session and ask for a roll call from time to time to oppose this little bill I can not understand.

Mr. HEYBURN. Mr. President, the enthusiastic interruption of the Senator from Washington has added no new light to the consideration of this question. I have in my hand here resolutions of the Board of Trade of Wallula, which is in the Senator's State. Yesterday I stated that I preferred not to call attention to the fact that his own constituency were opposed to this project; but I have here protests sent to the other House of Congress and sent to the Senate, against allowing a private enterprise to build a dam in this river, and setting forth that, in the judgment of the signers, some of these rapids might be very much improved if the Government would build dams and maintain them, so as to insure that perpetual maintenance which is necessary to the contemplated future use of this river.

But I am not here to defend myself because, forsooth, some citizens of Idaho, who are friends of the promoters of this enterprise, are kind enough to support them. I do not have to count and give a list of the names of those in the State that I represent upon this floor who support me in my views. I am here to represent the best interests of the State from the standpoint as I see it. That is the position of a Senator. If every Senator must come here with a petition signed by a majority of his constituents upon a measure of this kind in order to justify himself before this body, it would be a new departure in legislation. I take the responsibility. I take it the Senator from Washington will vote in favor of his bill, but I trust the majority of this Senate will not enter upon this kind of a project and shut the city of Lewiston off from the benefits of an open-river navigation.

I propose to ask Congress to give us an appropriation that will be sufficient to make this river navigable in spite of all the rapids at any stage of water. It is navigable now throughout the greater portion of the year. I think steamboats some years tie up as much as two or three weeks. In exceptional years it may be a little more than that, and sometimes not at all.

I have lived practically along this river for twenty-five years, and I know something of it. I see that the Senator from the city of Wallawalla, in the State of Washington, who once lived in the city of Lewiston, Idaho, is about to give us the benefit of his recollection; but it can add nothing to the fact that the interruption by reason of low water is just such interruption as we have on all the great rivers of the United States.

Mr. ANKENY. May I interrupt the Senator a moment?

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Washington?

Mr. HEYBURN. Yes.

Mr. ANKENY. May I call the Senator's attention to the fact that this river, even below its mouth, is already dammed, so that it is impossible to pass through it 50 miles below without passing through locks?

Mr. HEYBURN. I think the Senator, when he says that the river is dammed, refers to nature's handiwork.

Mr. ANKENY. No; I refer to the Celilo Dam.

Mr. HEYBURN. The Celilo Dam is to be overcome by the Celilo Canal.

Mr. ANKENY. That is just what we are trying to do now.

Mr. HEYBURN. The dam there is merely a temporary expedient. Now, I will tell something about the Celilo proposition, because I have been there and I know something about it. I had a conference in this city a few days since with the chairman of the committee that promoted the Celilo Falls Canal.

Mr. ANKENY. But this bill proposes no innovation, no experiment. The same thing has already been done twice below us. It has been done for years.

Mr. HEYBURN. Mr. President, there is no private dam on Snake River or the Columbia River where it is navigable. The Government of the United States spent many million dollars in building the locks at the Cascades of the Columbia River. They are finished and in use. I have passed through them both ways in steamboats. Then at the remaining obstacle of Celilo Falls the Government has made an ample appropriation for the purpose of building a canal 9 miles in length around the falls in the Columbia River at Celilo. I have been there on more than one occasion to investigate it, and I would say, in my judgment, that it ought to be finished next year.

Mr. ANKENY. But that is in the State of Oregon.

Mr. HEYBURN. Now they are talking about the State of Oregon and the State of Washington. That river belongs to no State so far as the purposes of navigation are concerned.

Mr. CARTER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Montana?

Mr. HEYBURN. Yes.

Mr. CARTER. I hope the Senator from Idaho will permit the senior Senator from Washington [Mr. ANKENY] to make the statement he manifestly desires to make.

Mr. HEYBURN. Would the Senator from Montana not be willing to leave the discretion and exercise of courtesy in that matter to the senior Senator from Idaho?

Mr. CARTER. Mr. President, I did not rise as a critic of the senior Senator from the State of Idaho. I thought an admonition would probably be accepted by him in good grace.

Mr. HEYBURN. Mr. President, I am not much in the habit of taking admonitions with good grace. I have passed the period of admonitions. I will yield at all times to any interruption from any Senator, but I do claim the right to finish a sentence when I have entered upon it and to exercise my judgment; and I think my judgment will be marked with as much courtesy as that of any member of this body.

Mr. CARTER. Mr. President, I withdraw the word "admonition" and substitute the word "suggest." I merely observed that the senior Senator from Washington desired to make a statement or to propound an interrogatory to the Senator from Idaho. The Senator from Idaho manifestly did not become apprised of the fact, and so I merely made the suggestion, which I thought it was eminently proper to make.

Mr. HEYBURN. Now, Mr. President, I am in a position that embarrasses me somewhat, in that I find my colleague [Mr. BORAH], who lives in the southern end of Idaho, is not in entire harmony with my position in regard to this matter. For many years I have had a continual contest, both before I was in public life and always since, to maintain those waterways against the greed of speculation. I am continually importuned to withdraw my objection to action to declare the Clearwater River, or, rather, as they express it, to condemn the Clearwater River as a navigable stream. I am importuned by petitions and letters and telegrams in the interest of speculative enterprises to withdraw my objection to building dams in the Snake River.

I am advised that there are five other applications only awaiting the vote on this bill to see whether they can come here and ask us to allow them to put dams in the Snake River for private enterprise, for private gain. That river belongs to all the people, not only of the city of Lewiston and of the State of Idaho, but of the United States. It is a waterway that I hope within a very limited number of years will be in a condition to carry a battle ship to the city of Lewiston.

I do not believe that the members of this body realize what that great Columbia River is. It is the Columbia River up to the city of Pasco, 5 miles below where they propose to build this dam, and from that point up it is the Snake River. The Columbia River forks at Pasco, or close by.

Mr. ANKENY. Mr. President, will the Senator allow me to interrupt him a moment right there?

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Washington?

Mr. HEYBURN. Certainly.

Mr. ANKENY. I will say that Pasco is way above the junction between the Snake River and the Columbia River, and the Snake River has two bridges over it there. The dam proposed by this bill will make the river no less open to the sea. There are other impediments below us.

Mr. HEYBURN. The Senator says Pasco is away above the junction. You can see both rivers from it.

Mr. ANKENY. I say Pasco is above the mouth of the Snake River.

Mr. HEYBURN. You can see Pasco from where the rivers run. They run practically down to it. I crossed there before the Northern Pacific Railroad did. I passed there on a ferryboat at the mouth of the Snake River. I know how far it is. It was not very far to walk to Pasco. So that it is merely drawing a fine line when you state that they are far apart. They are not on the identical same ground; but I crossed that river at that point in 1884, and that is a good while ago now.

Mr. ANKENY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield further to the Senator from Washington?

Mr. HEYBURN. Certainly.

Mr. ANKENY. I should like to set the Senator right. Pasco, I think, is 8 or 10 miles above the mouth of this river. That has nothing in the world, however, to do with this proposition. We are not interfering with the Columbia River at all. This bill merely allows the building of a little dam in the Snake River.

Mr. HEYBURN. Mr. President, to be diverted to a consideration of that question would be a waste of time, because it would make no difference to Idaho if it were proposed to build this dam a thousand miles below. Anything that stands between the State of Idaho and the sea is an interruption to Idaho's open-river navigation to the sea. There has been the most persistent pressure at all times to close up those rivers. Anything that would detract from their availability as channels of trade and arteries of commerce has been urged and urged and urged, and I say, without claiming any special advantage to myself, that I have stood there for many, many years resisting every encroachment of that kind, and I propose to stand here as long as the Senate and the Senate's rules will permit me to prevent this encroachment upon the rights of those people.

We must look beyond our own generation in these matters. Had this question come up thirty years ago or forty years ago we would have been met with the statement, "Why, what difference does it make? There is no one living in that country; there are no settlements there." And yet to-day we have living around this basin, through which this water flows, 60,000 people. But others than they are interested in this question. The whole State is interested in it, I care not whether upon its watershed or not; and I am in earnest about it. If I have to go back to the State of Idaho and confess that the people there are no longer at the head of open navigation to the sea I would feel that for some cause I had been unable or had been defeated in my effort truly and fairly to represent the State of Idaho.

I say, without the intention of being personal, that I would stake my seat in this body to prevent this wrong from being done to that State; and those who are opposing me can carry that word back to this "overwhelming sentiment" that they say is in favor of it. You can take the challenge to them. I say it only that you may know how earnest I am to protect Idaho and Idaho's interests. What Senator here would stand idly by and see a navigable river, the only one that connected his State with the open ocean and with the trade of the world, closed up by a private enterprise, by the construction of a dam, with locks, that would be maintained by private enterprise, with no Government or governmental assurance or security behind it? What Senator would stand here and see Congress, without his opposition and his resistance, vote to close up to any extent—even to the extent of placing a fragment of timber in it—a river that would detract from its value as an artery of trade, and then go back to his people and say, "It was a question of good fellowship; I wanted to please this neighbor or that." You can not settle these questions with the smile of good fellowship. It means something to a State just starting up in the strength of its new birth and growth like the State of Idaho, to be cut off and made an interior State when we have been spending millions of dollars to make it a seaboard State.

Mr. PILES. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Washington?

Mr. HEYBURN. Certainly.

Mr. PILES. I should like to ask the Senator if it is not a fact that to go down from Idaho to the open sea, of which he speaks, he has to go through the Celilo Canal and also through the locks at the Cascades? The proposition of the people of whom I have spoken here to-day is simply to put in a dam, under the supervision and direction of the Government, and to put a canal around that dam to overcome the riffles in the nonnavigable part of the Snake River for about 18 miles in certain seasons of the year. That canal being conveyed, as it must be under the law, to the Government of the United States, will enable the people of Lewiston to get to the open sea through that canal, around the proposed dam, exactly as they must get to the open sea by going through the Celilo Canal and the Cascade locks. I will ask the Senator if it is not exactly the same proposition? They can not get to any open sea without going through the canals I have mentioned. This proposition will, according to the Government engineer's report, improve the navigation of the river and set back that current, raising the water up so as to relieve the vessels of the riffles which they can not now navigate with safety, and can only navigate in certain seasons of the year. This project will enable them to navigate that part of the river covered with rapids at all seasons of the year, and the people of Lewiston, realizing that, have approved this bill.

Mr. HEYBURN. Mr. President, the reiterated statement that the people of Lewiston have approved this bill almost tempts me to the point of indiscreetness in speaking of the people who approve of this bill. But I will not do it. They are fellow-citizens of mine, and they belong to the State, but the State does not belong to them. The Celilo Falls improvement has the Government of the United States behind it with an expenditure, I think, of over $9,000,000. The Cascade locks, the only other obstacle, have been removed and the Government stands behind that project as a pledge for its perpetual maintenance. But here we have a puny enterprise with $25,000 capital on paper——

Mr. PILES. Does the Senator think that is a fair statement?

Mr. HEYBURN. Yes; I am going to make it fair, because I have their own statement here, if the Senator will give me an opportunity to read it.

Mr. PILES. Their own statement shows that they have property of the value of $300,000 over and above their debts.

Mr. HEYBURN. Mr. President, I intend to know very soon what the tax collector and assessor place the value of their property at in that county. I shall probably know before we close the discussion of the question.

Mr. PILES. I do not care if he puts it at $35.

Mr. HEYBURN. Is it $15,000?

Mr. PILES. I do not know whether it is $15, and I do not care, if the Senator will pardon me.

Mr. HEYBURN. It might make some difference probably to the Senate.

Mr. PILES. On that point I will simply say that this corporation was organized and is controlled by good men. The Senator will not deny that. They, as I understand, figure that this proposition will cost them a million and a half dollars. They do not expect with a capital stock of $25,000 to build this dam and canal. They propose to increase their capital stock when they find they can go on with this work, and they have men behind it, as they tell me, who will finance the proposition.

Mr. HEYBURN. Now, just a moment, if the Senator will permit me. The Senator and I were together when I asked the question of the representative of this corporation, who, I believe, was its president, in one of the rooms adjoining this Chamber, as to what and who was behind it. He said that was a question that he did not feel at liberty to enter upon. So that this applicant, this suppliant is somewhere back of these promises, but we are not permitted to know who he is.

Mr. PILES. If the Senator will pardon me just a moment——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Washington?

Mr. HEYBURN. Certainly.

Mr. PILES. The gentleman to whom the Senator refers stated that he did not care to divulge the names of the business men who would put their money into this proposition, but all of those men are well known in the State of Washington. They are recommended by stable men in the State of Washington as men of character. I do not know some of them, but I do know that the men in Kennewick and in Pasco and other places who have urged me to support this bill vouch for the character and ability of these men; otherwise I would not be here asking Congress to give them the privilege which they seek. If the Senator has any objection as to the character and ability of these men, he can readily find out about them in the State of Washington, where they live.

Mr. HEYBURN. Mr. President, I would object to this proposition regardless of the responsibility of the individuals, because I am objecting to this, not on personal grounds, but because of the principle that it involves, and because of the effects that would flow from it. I should like to know whether either of the Senators from the State of Washington will undertake to say that this corporation on the tax rolls anywhere pays taxes on $15,000 worth of property?

Mr. PILES. I can not say anything about that. I do not know anything about it.

Mr. HEYBURN. Well, Mr. President, we are asked here to consider the proposition of granting to this private enterprise the right to take possession of this great waterway—which I think I would not be exaggerating should I say that it is as broad as the Potomac in front of this city—to take possession of it and undertake to construct a dam in it. What they want is to take possession of it for the purpose of a financial exploitation that will enable them to take this privilege which Congress gives, and then sell it to someone else. I said to them—and I have copies of all my letters here—"Let us see the plans and specifications upon which you propose to base this work; let us see your estimated cost of construction; let us see your esti-

mate for the cost of maintaining it after it is constructed. Let Congress know whether they are asked to grant a privilege to a myth or whether there is behind it that substantial character which should be behind any public enterprise. Then," I said, "there will be nothing left to consider but the question of the law and what we may and should do under the law, with fixed and determined conditions to deal with." I have not received them, but I have received a statement that no plans, specifications, estimates, or drawings have ever been prepared. I have the statement of General Mackenzie, who is the Chief of Engineers, saying over his own signature:

So far as the records show no plans and specifications for the purpose mentioned within have been submitted to this office by the Benton Water Company.

That is the party seeking this right at the hands of Congress.

Mr. President, I believe, notwithstanding the fact that Congress has delegated to the Engineer Corps of the War Department the supervisory right to pass upon these plans and specifications, that Congress in granting the right to any applicant should have as accurate information as would be required by the Department. Are we to sit here and pass laws giving rights for the exploitation of chimerical or imaginary enterprises to parties who can not carry them into effect, that they may go into the market and seek buyers or backers for them? I take it not.

I ask that this bill shall go back to the committee which reported it, without any reflection upon the watchful care of that committee. I ask that it may go there in order that these facts may be determined by that committee and investigated and passed upon and the facts may come in here in the shape of a report accompanying the bill. Is there anything unreasonable about that? Is there any such haste that we should grant this right to this financial uncertainty at this time and at this hour that you should refuse to send it back to the committee with, I hope, some light upon the whole question, that they may consider the propriety of recommending the passage of a bill of this kind with a full knowledge of the facts.

Mr. President, I ask a vote upon the motion I have made, that the bill be referred back to the Committee on Commerce.

The VICE-PRESIDENT. The question is on agreeing to the motion made by the Senator from Idaho.

The motion was rejected.

Mr. FRYE. The junior Senator from Idaho [Mr. BORAH] yesterday offered an amendment to the bill. I should like to have it reported, if it is at the desk.

The VICE-PRESIDENT. The Secretary will state the amendment presented by the junior Senator from Idaho.

The SECRETARY. Add at the end of section 1:

Provided, That said Benton Water Company, its successors or assigns, shall construct, operate, and maintain locks, perpetual and free of charge or toll to navigation and navigators, and shall so use said stream as not in any manner to obstruct, embarrass, or retard navigation.

Mr. KEAN. Mr. President, has the amendment been agreed to?

The VICE-PRESIDENT. It has been agreed to.

Mr. HEYBURN. The amendment was not objected to. There is no objection to it. The bill is no better with the amendment than it was without it. The act of 1906 attached that amendment to the bill, for whatever it is worth. The act of 1906 and the other provisions of general law require that they shall do exactly what the amendment of the junior Senator from Idaho says they shall do. So it adds nothing to the bill one way or the other.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the junior Senator from Idaho?

Mr. HEYBURN. Certainly.

Mr. BORAH. Mr. President, in view of the suggestion which has just been made, I desire to say a word with reference to the position I occupy in regard to this bill.

As I said yesterday, it was not my intention when the bill came up for consideration to make any remarks in regard to it, because I considered it largely and almost exclusively a matter for the Senators from Washington to take care of. But there was one matter which was of some concern to the people of the State which I have the honor in part to represent, and that was the question of the navigation or navigability of the stream. I was aware of the fact that the Secretary of War had supervisory power over the navigation of our streams. I had learned that in my experience in reference to the streams in Idaho, because we have been building dams under the supervisory power of the Secretary of War upon all of the navigable streams in the State of Idaho since I have been there, and, of course, we were perfectly familiar with that proposition.

But when this matter came up for consideration, I said to the Senators from Washington that I desired a more specific arrangement with reference to this particular matter; that there was some question about the general law being sufficient and efficient to cover that proposition; and I therefore submitted this amendment to the Senators from Washington, and they agreed to it and were satisfied with it. That satisfying me fully as to the proposition of there being no impediment to navigation, I agreed with them to support the bill, and for that reason I am doing so and propose to continue to do so.

There is no controversy here between my colleague and myself with reference to the desire to keep open the Snake River as a stream for navigable purposes. I maintain that that is protected in this instance both by the general law, which is executed under the supervisory power of the Secretary of War, and by the specific arrangement which is included in and attached to this bill. It can not be successfully said, in view of the general law and of this amendment, that any dam to be erected in Snake River will in any way retard, impede, or embarrass navigation, and that is the only thing with which the people of the State of Idaho are concerned.

I looked at it that if the people of the State of Washington desire to reclaim a hundred and fifty thousand acres of land and build homes upon those lands, so long as the State of Idaho is not affected in any way, shape, or form, it is the part of good legislation here, so far as I am concerned, to vote to aid the people of the State of Washington in their desire to do that specific thing. I believe that the amendment does protect the situation, and therefore I support the bill.

It is said that the President proposes to veto such a measure; that he does not propose that such measures shall again become the law. If it is the desire of the Senate to establish a new policy, or if it is the desire of the President to establish a new policy in regard to those matters, I am very much in favor of this policy, but I am here carrying out a policy as old as the Government itself, a policy which has been repeated time and again in the Senate Chamber within the last ten years. The Snake River has in it, to my personal knowledge, three private dams, which were built by private individuals, and that portion of the river is navigable. It is no new thing to the State of Idaho. We are interested in reclaiming that entire country, and I am willing for one to assist all who wish to do so.

Mr. HEYBURN. In section 1 of the act of June 21, 1906, which is existing law, it is provided—

That in approving said plans—

That is, plans for the erection of this class of work—

and location such conditions and stipulations may be imposed as the Chief of Engineers and the Secretary of War may deem necessary to protect the present and future interests of the United States, which may include the condition that such persons shall construct, maintain, and operate, without expense to the United States, in connection with said dam and appurtenant works, a lock or locks, booms, sluices, or any other structures which the Secretary of War and the Chief of Engineers at any time may deem necessary in the interest of navigation, in accordance with such plans as they may approve, and also that whenever Congress shall authorize the construction of a lock, or other structures for navigation purposes, in connection with such dam, the person owning such dam shall convey to the United States, free of cost, title to such land as may be required for such constructions and approaches, and shall grant to the United States a free use of water power for building and operating such constructions.

That is all the amendment does. That was already the law, and they would have been required to do those things under existing law.

Mr. President, so far as the irrigation question is concerned, in order that we may see the scope and intent of this corporation to take possession of this river, I will ask you to consider this provision in the articles of incorporation:

The objects for which this corporation is formed are as follows:

"1. To own, construct, operate, and maintain a water-power plant for electrical, manufacturing, irrigating, and other purposes."

They were incorporated on the 21st of April, 1905, three years ago.

2. To build, own, operate, and maintain irrigation canals and ditches; acquire and make appropriations of water; sell water rights, and charge and receive rentals and tolls for supplying water for irrigation and domestic purposes.

3. To develop the water power of the Yakima River, in township 9, range 28 east, Willamette meridian, for the purposes of generating electricity for use for light and power; to take and receive from any public or private corporation, franchises and privileges; to generate and transmit electric power to other points in the State of Washington, and to sell the same.

4. To borrow money, execute its promissory note therefor, etc.

The last provision is probably the most important, and the one that will be most frequently appealed to.

I yield to no man, in or out of Congress, in my devotion to the irrigation system and to the reclamation of the arid lands of the United States. I have been connected with it and interested in it and speaking and writing for it for a great many

years. I have, from the beginning, given my support to every such measure, where I was in a position to give support to such legislation and to carrying out of such plans as the legislation authorized. The State of Idaho has benefited to a greater extent than any other State in the Union by irrigation. The State of Idaho has more acres of land under irrigation as a result of the enactment of the Carey Act than any other State in the United States. Idaho had the first and has the largest reclamation project under what is known as the "reclamation act" of any State in the Union. The Minidoka project is practically and fully complete, because the water is turned into the ditches, and last year they raised a very considerable amount of crops, and this year will raise full crops.

I have asked and Congress, so far as the Senate is concerned, has granted, in addition to the 1,000,000 acres allowed under the Carey Act to that State, 2,000,000 acres, not before we wanted it, but because we have the actual applications for that land from responsible parties who are able to carry the law into effect. Think you that I would be the one to stand on this floor and throw any obstacle in the way of any enterprise for the reclamation of the arid lands of any country? But if parties should come here and propose to draw their water supply from the sun by extinguishing it, or from the clouds, I would look with a somewhat critical eye upon their scheme. If they were to propose to reclaim these lands at the expense of cutting off the water supply of a great city, I should look with a critical eye at their proposition. If they came here and proposed to reclaim these lands with $25,000 of capital at the expense of the navigation of Snake River, then I look not only with a critical eye, but I raise the hand of protest, because I know there is no stability behind this proposition, and it is simply asking Congress to give them the capital of an exploiter to go upon the market and try to sell their rights.

The Senator from Washington admits that the president of this company gave as a reason for not disclosing the parties who were to make this a substantial enterprise that it was not policy.

Mr. PILES rose.

Mr. HEYBURN. Is that correct?

Mr. PILES. I was going to say it is not correct. We all know that men who engage in big enterprises——

Mr. HEYBURN. Before I submit to the interruption, if the Senator please, he says that is not correct, and I am not content to be met with that kind of denial, and then have the Senator go off and make a speech on some other part of the question. In what way is it incorrect?

Mr. PILES. In this way——

Mr. HEYBURN. Let us finish this now.

Mr. PILES. It is incorrect in this respect, that the gentleman stated, as I understood him, that the men who were interested in this project and who were furnishing the money were men of means; at least that is what he told me.

Mr. HEYBURN. I want to know the conversation he had in the presence of both of us.

Mr. PILES. The Senator will pardon me. He has asked me to answer him.

Mr. HEYBURN. But the Senator refers to some conversation when I was not present, I think.

Mr. PILES. The conversation as I understand it is that between the president of the company and you and myself. You asked him the names of the gentlemen interested with him in the project who were to furnish the money, and he said he did not care to bring those men's names into the transaction, as I now recall it.

Mr. HEYBURN. Wherein does that differ from the statement I made, that he said that he did not care to disclose their names or identity?

Mr. PILES. But you said it was because he did not regard it as good policy.

Mr. HEYBURN. Wherein does the Senator's statement differ from the statement I made, which he said was not correct?

Mr. PILES. I do not maintain that there is any material difference, but I should like to say this to the Senator: What is the difference whether these men have a capital stock of $25,000 or $25,000,000?

Mr. HEYBURN. I think I will not be interrupted for the reiteration of that statement.

Mr. PILES. Let me ask you this question.

The VICE-PRESIDENT. Does the Senator from Idaho yield further to the Senator from Washington?

Mr. HEYBURN. I will yield for a question.

Mr. PILES. Is it not a fact that under the law of June 21, 1906, the parties receiving a grant of this character are required to commence work on it within one year and to complete it, according to plans and specifications approved by the Government, within three years? Now, who can be hurt under a proposition of that kind, whether these gentlemen have money or whether they have not money?

Mr. HEYBURN. It is not probable that the corporation pleading for this right, the Benton Water Company, would be able to carry out the plan at all; in fact, you may say with confidence that they would not. Is it proper for Congress to send out a roving commission to hunt up capital for the purpose of engaging in an enterprise of this kind, that is to be based upon a presumption behind the passage of any legislation that the parties to whom the grant is given are capable of carrying it out? What kind of legislation would that be?

If some unknown incompetent were to come to Congress and ask for the right to build a bridge across the Potomac River—some person with no responsibility behind him, or unable to show any—and who would say, "I do not care to tell you who is behind me," with a broad intimation that there was great wealth behind him, would Congress give it very much consideration?

Mr. PILES. I should like to ask the Senator from Idaho a question. Does he propose to let this question come to a vote to-night? If he does not——

Mr. HEYBURN. I do not propose to allow it to come to a vote at any time when I can prevent it by any rule of this body or any action on my part. I will be perfectly candid about it.

Mr. PILES. If the Senator does not intend to allow the question to come to a vote to-night, I am sure I do not want to be responsible for keeping Senators here over a little matter of no great consequence—purely local. If he says he will not let the matter come to a vote to-night, I will move that the Senate adjourn.

Mr. HEYBURN. I have said to the Senator it is my intention not to allow it to come to a vote at any time if I can prevent it.

Mr. PILES. I move that the Senate adjourn.

Mr. BORAH. Mr. President, I omitted when I was on my feet before to read a telegram or two, which I wish to read in order that they may go into the RECORD.

Mr. PILES. I will be very glad to withdraw the motion for that purpose.

Mr. BORAH. I have received these telegrams since this discussion commenced:

LEWISTON, IDAHO, *March 31, 1908.*

Hon. W. E. BORAH,
United States Senate, Washington, D. C.

Lewiston Commercial Club and people here favor Benton dam at Fivemile, in Snake River, if bill amended as heretofore proposed. With bill amended, we think proposed dam will aid and not impede navigation. Proposed works by Benton Water Company will, in our judgment, be aid in securing open river from Lewiston to sea.

J. B. MORRIS,
JOHN O. BENDER,
STORRI BUCK,
Committee.
D. J. MCGILVERY,
President.

From the same place:

Senator W. E. BORAH,
Washington, D. C.

People here favor Benton Water Company dam at Fivemile Rapids, Snake River, provided bill amended as heretofore stated in resolution by Commercial Club.

HENRY HEITFELD.

Formerly a member of this body.

Mr. PILES. Mr. President——

Mr. HEYBURN. I want to say—and then I will yield to the Senator—that it can go back to Lewiston; that I do not accept the judgment of those men as a sufficient reason why I should abandon the interests of the State of Idaho.

Mr. PILES. I move that the Senate adjourn.

The motion was agreed to, and (at 4 o'clock and 30 minutes p. m.) the Senate adjourned until to-morrow, Wednesday, April 1, 1908, at 12 o'clock meridian.

NOMINATIONS.

Executive nominations received by the Senate March 31, 1908.

AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY.

David Jayne Hill, of New York, now envoy extraordinary and minister plenipotentiary to the Netherlands and Luxemburg, for promotion, to be ambassador extraordinary and plenipotentiary of the United States to Germany, to take effect June 1, 1908, vice Charlemagne Tower, resigned.

ENVOYS EXTRAORDINARY AND MINISTERS PLENIPOTENTIARY.

Arthur M. Beaupré, of Illinois, now envoy extraordinary and minister plenipotentiary to the Argentine Republic, to be envoy extraordinary and minister plenipotentiary of the United States to the Netherlands and Luxemburg, to take effect June 1, 1908, vice David Jayne Hill, nominated for promotion to be ambassador extraordinary and plenipotentiary to Germany.

Spencer F. Eddy, of Illinois, now secretary of the embassy at Berlin, for promotion, to be envoy extraordinary and minister plenipotentiary of the United States to the Argentine Republic, to take effect June 1, 1908, vice Arthur M. Beaupré, nominated to be envoy extraordinary and minister plenipotentiary to the Netherlands and Luxemburg.

APPOINTMENTS IN THE ARMY.

General officers.

Brig. Gen. Charles B. Hall to be major-general from March 28, 1908, vice Greely, retired from active service.

Col. John B. Kerr, Twelfth Cavalry, to be brigadier-general, vice Hall, to be appointed major-general.

POSTMASTERS.

KANSAS.

Elon G. Dewey to be postmaster at Moline, Elk County, Kans., in place of Elon G. Dewey. Incumbent's commission expired January 22, 1908.

Theodore Iten, jr., to be postmaster at Ellinwood, Barton County, Kans., in place of John Grant, removed.

KENTUCKY.

Llewellyn F. Sinclair to be postmaster at Georgetown, Scott County, Ky., in place of Llewellyn F. Sinclair. Incumbent's commission expires April 27, 1908.

Charles F. Troutman to be postmaster at Shepherdsville, Bullitt County, Ky. Office became Presidential October 1, 1907.

John B. Weller to be postmaster at Bardstown, Nelson County, Ky., in place of John B. Weller. Incumbent's commission expired December 16, 1907.

LOUISIANA.

Ernest J. Lyons to be postmaster at Melville, St. Landry Parish, La. Office became Presidential October 1, 1907.

Claude H. Wallis to be postmaster at Houma, Terrebonne Parish, La., in place of Ernest A. Dupont. Incumbent's commission expired February 18, 1908.

Jessie B. Wells to be postmaster at Leesville, Vernon Parish, La., in place of Jessie B. Wells. Incumbent's commission expired February 18, 1908.

Thomas M. Wells to be postmaster at Colfax, Grant Parish, La. Office became Presidential January 1, 1908.

MASSACHUSETTS.

Martin E. Stockbridge to be postmaster at Dalton, Berkshire County, Mass., in place of Martin E. Stockbridge. Incumbent's commission expires April 19, 1908.

MISSOURI.

August W. Enis to be postmaster at Clyde, Nodaway County, Mo., in place of August W. Enis. Incumbent's commission expired February 11, 1907.

Clifford M. Harrison to be postmaster at Gallatin, Daviess County, Mo., in place of Clifford M. Harrison. Incumbent's commission expires April 19, 1908.

Ben J. Smith to be postmaster at Ava, Douglas County, Mo. Office becomes Presidential April 1, 1908.

NEW YORK.

Judson A. C. Knapp to be postmaster at Churchville, Monroe County, N. Y., in place of Myron A. Wheeler. Incumbent's commission expired February 20, 1908.

OHIO.

Mary M. Carey to be postmaster at Lexington, Richland County, Ohio. Office became Presidential January 1, 1907.

Lee L. Cassady to be postmaster at Dresden, Muskingum County, Ohio, in place of Lee L. Cassady. Incumbent's commission expired February 1, 1908.

Thomas G. Moore to be postmaster at Barnesville, Belmont County, Ohio, in place of Thomas G. Moore. Incumbent's commission expires April 27, 1908.

Robert H. Wiley to be postmaster at Flushing, Belmont County, Ohio, in place of Robert H. Wiley. Incumbent's commission expires April 19, 1908.

PENNSYLVANIA.

Luther M. Alleman to be postmaster at Littlestown, Adams County, Pa., in place of Luther M. Alleman. Incumbent's commission expires April 27, 1908.

Harvey E. Brinley to be postmaster at Birdsboro, Berks County, Pa., in place of Harvey E. Brinley. Incumbent's commission expired March 16, 1908.

James E. Rupert to be postmaster at Conneautville, Crawford County, Pa., in place of James E. Rupert. Incumbent's commission expires April 27, 1908.

Bert L. Venen to be postmaster at Springboro, Crawford County, Pa. Office becomes Presidential April 1, 1908.

RHODE ISLAND.

Walter Price to be postmaster at Westerly, Washington County, R. I., in place of Walter Price. Incumbent's commission expires April 27, 1908.

WEST VIRGINIA.

John E. Houston to be postmaster at Davis, Tucker County, W. Va., in place of John E. Houston. Incumbent's commission expires April 27, 1908.

WISCONSIN.

Henry J. Goddard to be postmaster at Chippewa Falls, Chippewa County, Wis., in place of Henry J. Goddard. Incumbent's commission expires April 27, 1908.

CONFIRMATIONS.

Executive nomination confirmed by the Senate March 30, 1908.

POSTMASTER.

OKLAHOMA.

Charles W. Young to be postmaster at Carnegie, Caddo County, Okla.

Executive nominations confirmed by the Senate March 31, 1908.

APPOINTMENT IN THE MARINE-HOSPITAL SERVICE.

Harry J. Warner, of Illinois, to be assistant surgeon in the Public Health and Marine-Hospital Service of the United States.

MARSHAL.

Samuel Grant Victor, of Oklahoma, to be United States marshal for the eastern district of Oklahoma.

PROMOTIONS IN THE NAVY.

To be lieutenants, junior grade, in the Navy from the 3d day of February, 1908, upon the completion of three years' service in present grade:

Charles C. Moses,
Lindsay H. Lacy,
Macgillivray Milne,
Wilbur R. Van Auken,
Austin S. Kibbee,
Martin K. Metcalf, and
Thomas H. Taylor.

To be lieutenants in the Navy from the 3d day of February, 1908, to fill vacancies existing in that grade on that date:

Lindsay H. Lacy,
Macgillivray Milne,
Wilbur R. Van Auken,
Martin K. Metcalf, and
Thomas H. Taylor.

Assistant Surgeon Francis M. Shook to be a passed assistant surgeon in the Navy from the 15th day of March, 1908, upon the completion of three years' service in present grade.

To be assistant naval constructors in the Navy from the 24th day of March, 1907, to fill vacancies existing in that grade on that date:

Robert B. Hilliard,
Edwin O. Fitch, jr.,
Lee S. Border,
John C. Sweeney, jr.,
James O. Gawne, and
Alva B. Court.

POSTMASTERS.

COLORADO.

Charles D. Pickett to be postmaster at Wray, Yuma County, Colo.

FLORIDA.

Rix M. Robinson to be postmaster at Pensacola, Escambia County, Fla.

ILLINOIS.

John W. Campbell to be postmaster at Morrisonville, Christian County, Ill.

Alfred Schuler to be postmaster at Mound City, Pulaski County, Ill.

Elmer E. Smith to be postmaster at Clayton, Adams County, Ill.

Paul Spitzer to be postmaster at Techny, Cook County, Ill.

Benjamin Wendling to be postmaster at Des Plaines, Cook County, Ill.

Samuel S. Yolton to be postmaster at Villa Grove, Douglas County, Ill.

IOWA.

William G. Ross to be postmaster at Fairfield, Jefferson County, Iowa.

KANSAS.

Henry C. Abbott to be postmaster at Le Roy, Coffey County, Kans.

Charles T. Dallam to be postmaster at Hoxie, Sheridan County, Kans.

June B. Smith to be postmaster at Cottonwood Falls, Chase County, Kans.

KENTUCKY.

John W. Breathitt to be postmaster at Hopkinsville, Christian County, Ky.

E. S. Morrison to be postmaster at Latonia, Kenton County, Ky.

Charles G. Robinson to be postmaster at Earlington, Hopkins County, Ky.

Will P. Scott to be postmaster at Dawson Springs, Hopkins County, Ky.

James W. Thomason to be postmaster at Uniontown, Union County, Ky.

Lizzie Vaupel to be postmaster at Morganfield, Union County, Ky.

MICHIGAN.

Charles A. Cline to be postmaster at West Branch, Ogemaw County, Mich.

William N. Lister to be postmaster at Ypsilanti, Washtenaw County, Mich.

MINNESOTA.

William E. Easton to be postmaster at Stillwater, Washington County, Minn.

Mons Hauge to be postmaster at Benson, Swift County, Minn.

Paul H. Tvedt to be postmaster at Nashwauk, Itasca County, Minn.

MONTANA.

Oscar H. Davey to be postmaster at Whitehall, Jefferson County, Mont.

Lawrence Hauck to be postmaster at Philipsburg, Granite County, Mont.

NEBRASKA.

Joseph G. Alden to be postmaster at Aurora, Hamilton County, Nebr.

Thomas A. Boyd to be postmaster at Beaver City, Furnas County, Nebr.

Glenwin J. Crook to be postmaster at Falls City, Richardson County, Nebr.

Andrew D. McNeer to be postmaster at Blue Hill, Webster County, Nebr.

Similien L. Perin to be postmaster at Sargent, Custer County, Nebr.

Melancthon Scott to be postmaster at South Auburn, Nemaha County, Nebr.

John A. Wood to be postmaster at Ewing, Holt County, Nebr.

NEW JERSEY.

Harry E. Frey to be postmaster at Stewartsville, in the county of Warren and State of New Jersey.

TEXAS.

J. W. Bradford to be postmaster at Mount Vernon, Franklin County, Tex.

WEST VIRGINIA.

James Faulkner to be postmaster at Macdonald, Fayette County, W. Va.

WISCONSIN.

Albert G. Kurz to be postmaster at Green Bay, Brown County, Wis.

HOUSE OF REPRESENTATIVES.

TUESDAY, *March 31, 1908.*

The House met at 12 o'clock m.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of the proceedings of yesterday was read and approved.

URGENT DEFICIENCY BILL.

Mr. TAWNEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill H. R. 19955, the urgent deficiency appropriation bill, with Senate amendments thereto, and ask concurrence in the Senate amendments.

Mr. SULZER. Mr. Speaker, reserving the right to object, I would like to have the amendments reported.

The SPEAKER. The gentleman from Minnesota asks unanimous consent to take from the Speaker's table the bill H. R. 19955, the urgent deficiency bill, with Senate amendments, and consider the same at this time.

Mr. SULZER. Mr. Speaker, I would like to have the amendments reported.

The SPEAKER. The Clerk will report the bill and amendments.

The Clerk read as follows:

H. R. 19955. An act making appropriations to supply certain additional urgent deficiencies in the appropriations for the fiscal year ending June 30, 1908.

The amendments were read.

The SPEAKER. Is there objection?

Mr. WILLIAMS. I object, Mr. Speaker.

The SPEAKER. The gentleman from Mississippi objects, and the bill is referred to the Committee on Appropriations.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. CROCKETT, its reading clerk, announced that the Senate had passed bills of the following titles, in which the concurrence of the House of Representatives was requested:

S. 6350. An act granting an increase of pension to Jennie Carroll and Mabel H. Lazear;

S. 6136. An act authorizing the Secretary of War to issue patent to certain lands to Boise, Idaho;

S. 5590. An act for the promotion of Joseph A. O'Connor, carpenter in the United States Navy, to the rank of chief carpenter, and place him on the retired list;

S. 5388. An act for the relief of Benjamin C. Welch;

S. 5263. An act for the relief of William Parker Sedgwick;

S. 5227. An act granting an honorable discharge to Seth Wardell;

S. 5207. An act for the relief of William Radcliffe;

S. 6131. An act to authorize the construction of a bridge across the Rock River, State of Illinois;

S. 5862. An act to purchase certain lands adjacent to the present site of Fort Logan, Colo.;

S. 5620. An act to authorize the issuance of a patent to the assignee of Warner Bailey, for land located in Choctaw County, State of Alabama;

S. 5604. An act authorizing the Secretary of the Interior to reserve lands on Indian reservations for power and reservoir sites, and for other purposes;

S. 5038. An act for the relief of the White River Utes, the Southern Utes, the Uncompahgre Utes, the Tabeguache, Muache, Capote, Weeminuche, Yampa, Grand River, and Uinta bands of Ute Indians, known also as the Confederated Bands of Ute Indians of Colorado;

S. 4814. An act to amend section 491n of the Code of Law for the District of Columbia;

S. 4782. An act to remove the charge of desertion against Thomas L. Rodgers;

S. 4703. An act to provide for the leasing of allotted Indian lands for mining purposes;

S. 4132. An act creating an additional land district in the State of South Dakota;

S. 4107. An act to authorize the town of Chevy Chase, Md., to connect its water system with the water system of the District of Columbia;

S. 3952. An act to restore to the active list of the United States Marine Corps the name of Robert Morgan Gilson;

S. 3125. An act for the relief of Jabez Burchard;

S. 2743. An act for the relief of Peter McKay;

S. 1744. An act for the relief of the heirs of George A. Armstrong;

S. 1160. An act to correct the military record of Lora E. Reed;

S. 879. An act for the relief of John S. Higgins, paymaster, United States Navy;

S. 754. An act for ascertaining the feasibility and probable cost of constructing a canal from the Tennessee River, at or near the city of Chattanooga, in the State of Tennessee, to the navigable waters of the Ocmulgee River, in the State of Georgia, by which there will be furnished adequate water communication by the shortest and most practicable route between the Atlantic Ocean and the navigable waters in the rivers of the Mississippi Valley;

S. 655. An act for the relief of Richard A. Proctor;

S. 437. An act for the relief of D. J. Holmes; and

S. 388. An act to confirm and legalize prior admissions to citizenship of the United States where the judge or clerk of the court administering the oath to the applicant or his witnesses has failed to sign or seal the record, oath, or the judgment of admission, and to establish a proper record of such citizenship.

The message also announced that the Senate had passed with amendment bills of the following titles, in which the concurrence of the House of Representatives was requested:

H. R. 12499. An act for the relief of Clarence Frederick Chapman, United States Navy;

H. R. 15230. An act to amend an act approved February 28, 1901, entitled "An act relating to the Metropolitan police of the District of Columbia;" and

H. R. 603. An act granting an increase of pension to John A. M. La Pierre.